PROGRESS

Alberta
SOCIAL SERVICES

ALBERTA SOCIAL SERVICES

Information Guide To The Child Welfare Act

Unit I

Background Information
Philosophical Principles
Matters to be Considered
Major Innovations
Definitions

CHILD WELFARE IN PROGRESS
December, 1986

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PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,

Helen Wentz
Senior Director
Family and Children's Services
Alberta Social Services

HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute videotapes that may be available to you.

The overall objective of these modules is to give you, the child welfare worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

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UNIT I

Your specific objective is to work through this module and complete the exercises without assistance. Should you have additional questions, please consult your supervisor.

SECTION 1	Background Information	This section briefly describes the historical events that led to the development of the Act.
SECTION 2	Philosophical Principles	This section outlines eight areas that provide a foundation from which Departmental services are developed and delivered.
SECTION 3	Matters to be Considered	In this section the philosophical principles are further operationalized.
SECTION 4	Major Innovations	This section includes ten major changes and additions to the previous legislation.
SECTION 5	Definitions	This section includes definitions of a child, a child in need, emotional and physical injury, sexual abuse, and definitions of a day as it pertains to court.

THE CHILD WELFARE ACT

On July 1, 1985, the Government of Alberta proclaimed a new Child Welfare Act.

SECTION 1: BACKGROUND INFORMATION

1. The former Child Welfare Act was proclaimed in 1965 with numerous amendments until 1978.

2. In 1983, the formation of a committee to draft the new Child welfare Act was announced.

3. The committee undertook a review of briefs and reports as well as representation by community agencies and other interested and concerned Albertans.

4. In November, 1983, the Government introduced a new Child Welfare Act in the form of Bill 105.

5. During the following two year period, Departmental Personnel addressed over 200 briefs and attended more than 100 meetings to hear the views and suggestions of persons interested in Alberta's Child Welfare system.

6. After this extensive consultation, Bill 35 was tabled in the legislature and received assent on May 31, 1984. The new Act was proclaimed on July 1, 1985.

SECTION II: PHILOSOPHICAL PRINCIPLES

While the purpose of the Child Welfare Act is the protection of children, it is widely recognized that beliefs about how this goal is best achieved have a marked impact on the types of services offered. Therefore, the following will describe the values and principles that underlie the intent of the Child Welfare Act and upon which Departmental services to children and families are developed and delivered.

Within the constraints of available resources, the following principles guide the Department's development and delivery of Social Services in Alberta.

1. Basic Human Rights

The Department is committed to honouring and respecting human rights and fundamental freedoms and the dignity and worth of the person.

2. Personal Responsibility and Independence

The Department believes that, while its services must be responsive to people's needs, services should not replace or interfere with the responsibility and initiative of individuals, families and communities to meet their own needs. To the greatest extent possible, services should develop and enhance independence; and should involve individuals, families and communities in the development and delivery of services which affect them. When services are provided, they should be delivered in a way which minimizes intrusion, disruption and restriction.

3. Pre-Eminence of the Family

The Department believes that services should help maintain and support the family as a healthy functioning unit, and that most people are best cared for within the context of their family unit.

4. Prevention and Early Intervention

While recognizing the necessity of protection, crisis, treatment and rehabilitation services, the Department is also committed to providing a range of services which promote well being and prevent social problems.

5. Quality Services

The Department is committed to provision of quality services, and to ensuring that services:

- are available and accessible to all members of the service's target group within the scope of available resources;
- are coordinated within the Department and with other government and community resources;
- provide comprehensiveness and continuity of care;
- are appropriate to people's needs;
- encourage community resourcefulness, innovation and initiatives;
- are delivered by competent staff who are supported by effective administrative and supervisory practices and appropriate training and development opportunities.

6. Accountability

The Department is committed to ensuring that services are delivered in accordance with its stated mission and philosophical principles, and that mechanisms are in place to ensure accountability for delivery of efficient, effective and economical services - including definition of program and practice standards, monitoring and evaluation.

SECTION III: MATTERS TO BE CONSIDERED

While Philosophical Principles lend a base and a frame of reference from which to operate, there are "Matters to be Considered" that begin to erect a structure from the philosophical base.

It is essential that you, as a Child Welfare worker, fully understand Section 2 (entitled "Matters to be Considered") of the Child Welfare Act. Section 2 is a key part of the legislation because it outlines the values and principles upon which the legislation is based. Therefore, the intent of Section 2 must be incorporated into the planning and decision making that affects children who come to the attention of the Child Welfare system. Through understanding this part of the Child Welfare Act, you will be better positioned to coordinate the services you have to offer, with those of other professionals in the Department, Court and community.

In exercising any authority or making any decisions pursuant to this Act, the Court and all persons shall consider the following:

a. the family is the basic unit of society and its well-being should be supported and preserved;

(C.W.A. Section 2 (a))

Because of the importance that the family plays in the life of a child, there is a strong emphasis on maintaining the child within the family unit. Wherever possible, rather than remove the child from the home, supports are provided to the family either through private community agencies or directly through formal agreements between the family and the department. If the child must be removed from the home, every effort is made to quickly resolve the problem and place the child back in his/her family.

b. the interests of a child should be recognized and protected;

(C.W.A. Section 2 (b))

As a child welfare worker, your responsibility is to give priority to the protection of the child. All interactions and decisions must reflect the rights, welfare, and well-being of the child.

c. the family has the right to the least invasion of its privacy and interference with its freedom that is compatible with its own interest, the interest of the individual family members and society;

(C.W.A. Section 2 (c))

This matter reflects the philosophical principle regarding pre-eminence of the family. The family has the right to the least invasion of its privacy compatible with the protection of its children.

d. a child, if the child is capable of forming an opinion, is entitled to an opportunity to express that opinion on matters affecting the child and the child's opinion should be considered by those making decisions that affect the child;

(C.W.A. Section 2 (d))

This statement supports the basic human rights of any individual. As a child welfare worker, you are asked to give the same consideration to a child's expressed needs and opinions as you would to any adult.

Further, by considering the child's frame of reference in a case plan, you enhance its potential success.

e. the family is responsible for the care and supervision of its children and every child should have an opportunity to be a wanted and valued member of a family, and to that end

    i. if protective services are necessary to assist the family in providing for the care of a child, those services should be supplied to the family insofar as it is reasonably practicable to do so in order to support the family unit and to prevent the need to remove the child from the family, and

    ii. a child should be removed from the family only when other less intrusive measures are not sufficient to protect the survival, security or development of the child;

(C.W.A. Section 2 (e))

This sub-section of the Act emphasizes two points:

1. The family as a unit has primary responsibility for the care of its children, and

2. As a child welfare worker you must give consideration to all other alternatives before removal of the child from the family unit.

> f. any decision concerning the removal of a child from the child's family should take into account
>
> i. the benefits to the child of maintaining, wherever possible, the child's familial, cultural, social and religious heritage,
> ii. the benefits to the child of stability and continuity of care and relationships,
> iii. the risks to the child if the child remains with the family, is removed from the family, or is returned to the family, and
> iv. the merits of allowing the child to remain with the family compared to the merits of removing the child from the family;
>
> (C.W.A. Section 2 (f))

This sub-section details the factors to be considered in removing a child from his family, e.g. cultural and religious, continuity of relationships and any other important factors as they apply to the short- and long-range needs of the child.

> g. if it is not inconsistent with the protection of a child who may be in need of protective services, the child's family should be referred to community resources for services that would support and preserve the family and prevent the need for any other intervention under this Act;
>
> (C.W.A. Section 2 (g))

Since the Act places a heavy emphasis on supporting the family structure and maintaining the child is his/her home community, local community resources should be effectively developed and utilized. This may mean referring the family to a community agency, rather than having the Department become directly involved in the case.

h. any decision concerning the placement of a child outside the child's family should take into account

  i. the benefits to the child of a placement that respects the child's familial, cultural, social and religious heritage,
  ii. the benefits to the child of stability and continuity of care and relationships,
  iii. the benefits to the child of a placement within or as close as possible to the child's home community,
  iv. the mental, emotional and physical needs of the child and the child's mental, emotional and physical stage of development, and
  v. whether or not the proposed placement is suitable for the child;

(C.W.A. Section 2 (h))

In order to ensure that children and families receive the services that are appropriate to their individual needs, the legislation demonstrates a commitment, whenever possible, to recognizing the child's familial, cultural, social and religious heritage. This might mean, for example, using Native counselling agencies or Native schools when providing services to a Native child.

Department policy describes placement in the following order of priority:

Placement of Children Outside the Child's Family - Section 2(h)

When it is determined that children must be placed temporarily outside the family home, they must be placed in accordance with the following priorities in descending order:

1. placement with the child's extended family;
2. placement in the local community, settlement or home reserve or band;
3. placement in resources of the same linguistic background;
4. placement in resources of the same cultural and religious background;
5. placement in resources of other than the child's ethnic and cultural persuasion, but with persons who are willing and able to ensure the child will retain contact with persons of the same religious belief and cultural heritage of the child.

NOTE: Placements should facilitate keeping siblings together.

Should it not be possible to adhere to the preceding guidelines concerning placement, the child welfare worker shall document reasons in the case record.

Section 73 of the Act describes further conditions with specific regard to Native children which include or imply:

- an obligation for the child welfare worker to consult with the chief, band council or designate in specific circumstances, such as:
    - before entering into a permanent guardianship agreement, and
    - before applying for a supervision order or a temporary or permanent guardianship order.
- consideration of child's opinion in a culturally appropriate manner, e.g. communication patterns.
- the responsibility for individual workers to gain an awareness of native attitudes and customs, and to be aware that cultural values vary from one native community to another.
- consideration should be given to the utilization of services recommended by chief and council or band.

° obligation on the part of adoptive parents to inform the child in case of familial, social and religious heritage.

Section 2 (h) also emphasizes the need for selecting placements and developing programs for chlidren that address their intellectual needs, emotional needs and long term needs for permanency of relationships.

> i. the provision of protective services is intended to remedy or alleviate the condition that caused the child to be in need of protective services;
>
> (C.W.A. Section 2 (i))

This sub-section emphasizes the need for focussing on the ultimate outcome of Departmental services. Successful resolution means that the child is no longer in need of protective services and Departmental involvement is no longer required.

> j. if a child is being provided with care under this Act, the child should be provided with a level of care that is adequate to meet the needs of the child and consistent with community standards and available resources;
>
> (C.W.A. Section 2 (j))

The types of services available across the province vary in accordance with community needs and standards. The role of the child welfare worker may then differ depending upon the nature of the resources in their area.

> k. if a child is being provided with care under this Act, a plan for the care of a child should be developed that will address the child's need for stability and continuity of care and relationships;
>
> (C.W.A. Section 2 (k))

Case planning is emphasized throughout the legislation. Effective casework practice is dependent upon a written case plan, based on a logical problem-solving process. Case plans represent both interim and long-range methods of effecting change. They should be used as a basis for all interventions as early as the investigation process, and must be the basis for any intervention once it has been determined that a child is in need of protective services.

l. a person who assumes responsibility for the care of a child under this Act should endeavour to make the child aware of the child's familial, cultural, social and religious heritage;

(C.W.A. Section 2 (l))

This sub-section reinforces the necessity that all those providing care to the child take into account familial, cultural, social and religious factors important to each individual child. Caretakers include:

Child Welfare Workers
Foster Parents
Child Care Counsellors
Adoptive Parents

m. there should be no unreasonable delay in making or implementing a decision affecting a child.

(C.W.A. Section 2 (m))

This sub-section refers to the need for decisions to be made that acknowledge the child's sense of time and need for permanence and stability.

Exercise

1. The following are a few questions on the content you have covered - see how well you do. The answers follow.

	TRUE	FALSE
a. The principle of least intrusion suggests that child welfare workers' involvement with clients should only occur when there is a major protection concern.	___	___
b. Under the Child Welfare Act children should only be removed from the family after all other options have been tried	___	___
c. The opinion of a child does not need to be considered when making decisions that affect the child.	___	___
d. Once a Treaty Indian child is in Departmental custody all decisions are made by the Department and passed along to the Band Council.	___	___
e. Adoptive parents should inform a Native child about his/her cultural heritage.	___	___
f. Case plans are best left unwritten so that they can be flexible in their application to each individual circumstance.	___	___

2. The following are possible placement options to be considered by child welfare workers. List each option in order of priority by putting a number beside it, from 1 to 5 (1 is the highest priority ... 5 is the lowest).

Priority #

___ a. placement in homes other than the child's ethnic and cultural background.

___ b. placement with caretakers with the same linguistic, cultural or religious background.

___ c. placement with parent.

___ d. placement in culturally-appropriate receiving home.

___ e. placement with extended family.

Answers:

1. a. False. If a child welfare worker becomes involved before a crisis occurs, then the need for intrusive measures can be diminished. However, if a child welfare worker leaves a situation unattended until a crisis occurs, then the need for more intrusive measures may increase.

   b. False. Section 2 (e) of the Act requires that all less intrusive options be considered before removing a child from the family. The purpose of this is the selection of an intervention that meets the needs of the child. In some instances removal of the child may be the preferred option because the child's physical and emotional well being would be jeopardized if the child was allowed to remain in the home.

   c. False. The Act specifies that any child capable of forming an opinion must be given an opportunity to express his/her opinion and have it considered.

   d. False. The Band and Council should be consulted prior to any action taken that will affect the child, if the child lives on the reserve or, with the parent's permission, if the child is living off the reserve.

   e. True.

   f. False. Case plans must be written and well-documented. This ensures that objective outcomes and stated goals are reached.

2. a. priority #5
   b. priority #3
   c. priority #1
   d. priority #4
   e. priority #2

SECTION IV: MAJOR INNOVATIONS

This part of the manual provides an overview of the major changes and additions to previous legislation. They include:

1. Office of the Children's Guardian

Under the Act, the position of Children's Guardian has been established. The role is one of guardianship through decision-making, consenting, monitoring and advocating on behalf of children within the system. These duties are distinct from responsibilities for the provision of care, and the administrative aspects of the Act. The Children's Guardian delegates some of his authority to the Regional Children's Guardians and staff in the field, to ensure that the guardianship functions are effectively carried out across the Province.

2. Reporting and Investigating a Child in Need of Protection

To ensure that the Department intervenes in the affairs of families only when the survival, security or development of children is endangered, a clear definition of children to whom the Act applies is given. This definition, along with the opportunity for a director to set aside allegations of maltreatment which are unfounded or malicious, decreases the possibility of inappropriate intrusions into family life.

3. Case Planning

The Act reinforces the need for a case plan that is considered an integral part of the decision-making process. The case plan becomes a valuable document for planning, monitoring and evaluating the quality and type of care and services provided to the child and the child's family. The family is expected to participate in the development of the case plan.

4. Least Intrusive Measures

The Act allows for flexibility in adjusting the level of government intervention to protect the child, while at the same time considering the guardian's willingness and ability to participate in rehabilitative programs. It stresses the provision of support to families in their community. A director is provided with a continuum of options, ranging from referrals to community agencies to agreements and court orders. It must also be noted that least intrusiveness refers to the level of service to be provided, not whether a complaint is investigated.

5. Secure Treatment

The Act provides clear direction as to when a child may become the subject of a secure treatment certificate or order, and sets the condition that diagnostic and treatment services must be provided to children under orders and certificates. Time limitations, strict criteria, accountability to the courts, and reviews to extend or terminate orders, all provide children with due process and protection if their freedom is to be curtailed.

6. Joint and Private Guardianship

The Act provides the opportunity for individuals in the community who have a significant and continuing relationship with a child to participate with the Children's Guardian and share responsibilities for the child who is permanently in care. This is referred to as joint guardianship.

A simple and effective procedure is now available for the appointment of private guardians for a child. It allows private guardians to exercise sole guardianship authority for a child as an alternative to adoption or having the child remain in the long-term care of a director. Private guardianship allows for some ties to be maintained between the child and his/her natural parents, including the right of access and right of inheritance.

7. Adoptions

The Act provides for the development of a post-adoptive registry and outlines the conditions under which the identities of the adopted person, the birth parent(s) and adult siblings may be disclosed to those parties consenting to disclosure.

The Act permits the Minister, under specific conditions, to provide, monitor and review financial assistance to adoptive parents.

8. Appeals

The responsibility of a director to exercise the authority prescribed in this Act is balanced against a method of external appeal, to ensure that parties directly affected have recourse regarding certain decisions of a director. These include such areas as: removal and placement of children; opportunities for access to a child who is the subject of a permanent guardianship order or agreement; disclosure of information; refusal to enter into an agreement with a 16 or 17 year old child or in respect of a handicapped child; refusal or failure to enter into an agreement or apply for a court order where a child is in need of protective services; and the rejection of an application to become a foster parent or to become an adoptive parent.

The power of the Minister to appoint an appeal panel of persons external to the Department enhances the potential effectiveness of the appeal process for guardians of a child, the child, and other persons who have had continuous care of the child for at least six months. This ensures impartiality.

9. Indian Child Welfare

The Act provides for consultation between a chief and/or a band council and a director in matters pertaining to the entering of agreements or orders, when the child resides on a band or reserve. Consultation may also occur with the consent of the child's guardian if an Indian child is not a resident of the reserve, but a member of the band or council.

Recognition of Indian children's familial, cultural, social and religious heritage must be considered when child protection services are provided, and Indian children must be made aware of their status and rights by their caregivers.

10. Roles of Foster Parents

An appreciation of the strong contributions foster parents make to children in care of the department is reflected in the legislation. The potential involvement of foster parents in court proceedings and appeal panels are examples highlighting the importance of their role under the legislation.

Exercise

1. The four major roles of the Children's Guardian are: (check four)

___ advocating
___ monitoring
___ apprehension
___ decision-making
___ consenting
___ making arrests
___ seeking temporary guardianship
___ seeking supervision orders

2. The Child Welfare Act leaves the decision to develop a case plan or not to the individual child welfare worker. True _______ False _______

3. The Child Welfare Act provides the opportunity for individuals in the community who have significant relationships with a child permanently in care to share guardianship. This is called _________________________.

4. _________________________ allows guardians to exercise sole guardianship authority for a child as an alternative to adoption.

5. Any decisions of a director can be appealed to an appeal panel.
True _____ False _____

Answers:

1. Advocating, monitoring, consenting, and decision-making.

2. False. The Child Welfare Act specifically requires a case plan for provision of all services to children in need of protective services and/or their families.

3. Joint Guardianship.

4. Private Guardianship.

5. False. Only certain decisions of a director can be appealed.

SECTION V: DEFINITIONS

Section 1 of the Child Welfare Act contains the definitions upon which the legislation is based. Many of the actions that you will take under the legislation are dependent upon these definitions; therefore, it is important for you, as a child welfare worker, to clearly understand them. In this part of the manual, the key definitions that affect your role as a child welfare worker will be identified and discussed. In addition to the definitions in Section 1 of the Act, it is important to have an understanding of what the legal term "day" means in the legislation. The definition of a "day" will be explained in detail.

Definition of a Child

For the purpose of this Act, a child means a person under eighteen (18) years of age. Therefore, all actions commenced under this legislation must involve the care and protection of a child under the age of eighteen.

Child in Need

A child in need of protection is defined as a child whose survival, security or development is endangered. In sub-section 1(2) of the Act, these conditions are defined in more detail:

> 2 For the purposes of this Act, a child is in need of protective services if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:
>
> a. the child has been abandoned or lost;
> b. the guardian of the child is dead and the child has no other guardian;
> c. the guardian of the child is unable or unwilling to provide the child with necessities of life, including failing to obtain for the child or to permit the child to receive essential medical, surgical or other remedial treatment that has been recommended by a physician;
> d. the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child;
> e. the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse;
> f. the child has been emotionally injured by the guardian of the child;
> g. the guardian of the child is unable or unwilling to protect the child from emotional injury;
> h. the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment;
> i. the condition or behavior of the child prevents the guardian of the child from providing the child with adequate care appropriate to meet the child's needs.
>
> (C.W.A. Section 1 (2))

It is important to note that truancy is not identified as a condition where protective services are required. In Alberta, truancy is covered under the Education Act, and therefore falls under the jurisdiction of the Department of Education. It is important to be aware; however, that a report of truancy may be symptomatic of other problems that may necessitate Departmental involvement.

Definition of Emotional and Physical Injury, and Sexual Abuse

Since a good number of child welfare interventions come under the area of emotional, physical and sexual abuse, these conditions in particular are further defined in the legislation.

Definition of emotional injury:

a. A child is emotionally injured:

> i. If there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by a mental or behavioral disorder, including anxiety, depression, withdrawal, aggression or delayed development and:
>
> ii. there are reasonable and probable grounds to believe the emotional injury is the result of:
>
> A. rejection,
> B. deprivation of affection or cognitive stimulation,
> C. exposure to domestic violence or severe domestic disharmony,
> D. inappropriate criticism, threats, humiliation, accusations or expectations of or towards the child, or
> E. the mental or emotional condition of the guardian of the child or chronic alcohol or drug abuse by anyone living in the same residence as the child.
>
> (C.W.A. Section 1 (3) (a))

Definition of physical injury:

A child is physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth.

(C.W.A. Section 1 (3) (b))

Definition of sexual abuse:

A child is sexually abused if the child is inappropriately exposed or subjected to sexual contact, activity or behavior.

(C.W.A. Section 1 (3) (c))

Definition of a Day

Throughout the legislation, the definition of a day varies. This is due, in part, to past legal interpretation, the nature of the action (e.g. degree of intrusiveness, whether or not the time period relates to a court hearing), and length of time in which a specific action is required (e.g. one day, forty-eight hours, one month). Where the activity is court-related, the following rules apply:

1. Section 19(1) - an apprehended child may be returned to his/her guardian within two calendar days following an apprehension

   °°° exclude the day of the apprehension.

2. Section 19(2) - a Court hearing following an apprehension must occur within 10 calendar days

   °°° include Saturday, Sunday and holidays, and the day of the hearing, but exclude the day of the apprehension.

3. Section 19(4) - a Court hearing following a demand notice must occur on the next working day following receipt of the demand notice

   °°° exclude Saturday, Sunday or statutory holidays.

4. Section 20(3) - notice of a hearing for an order authorizing medical treatment must be heard not less than one calandar day from the day of the hearing.

   °°° exclude the day notice is served and exclude the day of the hearing).

5. Section 20(7) - applications to show cause for confinement must occur on the next working day following the confinement.

   °°° exclude Saturday, Sunday, or statutory holidays.

6. Section 21(2) - notice of an application for a supervision order or temporary or permanent guardianship order (other than under Section 19) shall be served not less than five calendar days prior to the hearing.

   °°° exclude the day notice is served and exclude the day of the hearing.

7. Section 41(1) - a secure treatment certificate shall be for not more than five calendar days.

   °°° 5 consecutive 24-hour periods commencing the day the child is confined.

8. Section 41(4) - a secure treatment certificate shall be served on a child within one calendar day after it is issued.

   °°° exclude the day the certificate is issued.

9. Section 42(2) - notice of a secure treatment order hearing shall be two calendar days.

   °°° exclude the day the notice is served and exclude the day of the hearing.

Exercise

In definitions of a child in need of protective services:

	TRUE	FALSE
1. Abuse must have occurred before any action can be taken under the Child Welfare Act.	___	___
2. A guardian is responsible for protecting the child.	___	___
3. A guardian may ignore a physician's recommendations to obtain needed medical treatment for a child.	___	___
4. Emotional injury is not included in the definition of a child in need of protective services.	___	___

Answers:

1. False. A child is in need of protection if their survival, security or development is endangered - Section 1(2) C.W.A.

2. True. Section 1(2)(c)

3. False. Section 1(2)(c)

4. False. The three common areas under which child welfare interventions occur are: physical abuse, emotional abuse and sexual abuse.

References

1. Alberta Social Services
   Handbook - Child Welfare in Progress.
   Tab 02 - "The Intent of the New Child Welfare Act"
   Tab 03 - Pages 01 to 06
   - Pages 96 to 97

2. Alberta Social Services
   Program Manual - Child Welfare in Progress.
   Chapter 4 - Page 23
   Chapter 8 - Pages 59-62

3. Alberta Social Services
   "Native Child Welfare Services Practice Guidelines".

4. Regional and District Office Materials
   Your region or district office may have developed additional policies and material on this area. Please consult your supervisor to determine if there is any additional information available.

APPENDIX

ANALYSIS OF CASE EXAMPLES
FROM VIDEO #2
"DEFINITIONS AND PRINCIPLES"

On the following pages is an analysis of the three case examples presented at the end of the video entitled "Definitions and Matters to Be Considered". As is the situation with the other case studies presented in this workbook, the analysis represents an attempt to provide you with an outline of the factors affecting your decision and some possible courses of action.

There are no black and white solutions because there is a large variance in personalities and circumstances from case to case. Also in "real life" case decisions it is important to conference the case with your supervisor and other professionals prior to taking action (other than emergency actions).

Case Example #1

Assessment

There are no signs of neglect or abuse in this situation. The child appears to be well cared for and to have a good relationship with her mother. The information gathered from the school also supports this. In this case the problem appears to pertain to parental conflicts that have emanated from the recent divorce.

Investigation Outcomes

No further investigation or action is indicated, other than notifying the reporter of the decision.

Case Example #2

Assessment

In this case example the child may be receiving inadequate supervision. The drop in grades, complaints of poor diet and dress, and the long periods of time that the daughter spends at her friends house might be due to a low level of care and supervision.

The first question the worker would want to address is:

° did the mother make arrangements for her daughter to spend the evenings at her friends house and, if so, what arrangements did the mother make?

If the arrangements were made by the mother and the daughter was adequately supervised and cared for, then this is clearly not a case of a child in need of protection.

However, if the mother did not make appropriate after school arrangements for her daughter, then the worker must consider issues such as the following:

° is there grounds to believe that the mother has abandoned the child (section 1(a))?

° is there substantial risk of physical injury or sexual abuse (section 1(d))?

° is the guardian unable or unwilling to protect the child from emotional injury (section 1(f))?

If the answer is yes to any of the above then the child can be considered in need of protection under the child welfare act.

If, on the other hand, the mother is leaving the child unsupervised, but the child does not fall under the definitions of section 1 of the Child Welfare Act, as is likely the case in this situation, then a referral to a community resource under section 5 (1)(d) of the Act might be the best course of action. This might involve contacting an outreach agency that has community youth workers or referring the mother to a family service agency. The resource that you select would depend upon factors such as: the mother's motivation to use the resource and the type of resources available.

Investigation Outcomes

Option 1 - No further involvement if the mother has arranged for adequate supervision.

Option 2 - Further investigation, and possible direct intervention by the Department or referral to a community resource if the child was believed to be in need of protection as defined by section 1 of the Child Welfare Act.

Option 3 - Referral to a community resource, if the child was not in need of protection under section 1 of the Child Welfare Act, but family support was indicated. A request would also be made to the community resource that they contact the Department should any protection issues arise.

Case Example #3

Assessment

In this example the child's bruises, avoidance of physical contact, and withdrawn behaviors are possible indicator's of abuse. Also the mother's denial may indicate an unwillingness to protect the child from abuse in the future. Although further investigation and assessment of the situation is required (in order to determine the degree and nature of the abuse, and the mother's motivation to protect the daughter) the evidence at hand would indicate that the child may be in need of protection under section (1) subsection (2)(e) of the Child Welfare Act.

Investigation Outcomes

The case plan for the family must include:

- interviews with the child, her mother and her mother's partner in order to gather further information on the problem.
- a physical examination of the child by a medical doctor may be necessary.
- possible referral of the family to a community counselling agency.
- ongoing intervention by the Department to ensure the protection of the child.

Volume

2

PROGRESS

Alberta
SOCIAL SERVICES

ALBERTA SOCIAL SERVICES

Information Guide To The Child Welfare Act

Unit II

Preliminary Interventions
Confidentiality
Agreements

CHILD WELFARE IN PROGRESS
December, 1986

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This manual is the result of input and written contributions from a broad range of Departmental staff. The Child Welfare Implementation Project is appreciative of the efforts of these individuals. Through their support and involvement, both the quality and relevance of this manual was greatly enhanced.

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PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,

Helen Wentz

Helen Wentz
Senior Director
Family and Children's Services
Alberta Social Services

HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute videotapes that may be available to you.

The overall objective of these modules is to give you, the child welfare worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

THE INFORMATION GUIDE SERIES

UNIT I

1 BACKGROUND INFORMATION
2 PHILOSOPHICAL PRINCIPLES
3 MATTERS TO BE CONSIDERED
4 MAJOR INNOVATIONS
5 DEFINITIONS

UNIT II

1 PRELIMINARY INTERVENTIONS
2 CONFIDENTIALITY
3 AGREEMENTS

UNIT III

1 SUPERVISION ORDERS
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3 SERVICE FOR COURT AND RIGHTS OF APPEARANCE

UNIT IV

1 CHILDREN'S GUARDIAN AND DIRECTORS
2 TEMPORARY GUARDIANSHIP
3 PERMANENT GUARDIANSHIP

UNIT V

1 CONFINEMENT OF AN APPREHENDED CHILD
2 SECURE TREATMENT CERTIFICATE
3 SECURE TREATMENT ORDER
4 APPEAL PROCESS

UNIT VI

1 JOINT GUARDIANSHIP
2 PRIVATE GUARDIANSHIP
3 ADOPTION

UNIT VII

YOUNG OFFENDERS ACT

1 DEFINITIONS AND PRINCIPLES
2 PRE-COURT PROCEEDINGS
3 ROLE OF THE COURT
4 POST-COURT PROCEEDINGS

UNIT II

The specific objective for this module is to have you read the information and complete the questions provided after each section. At the end of Section 3 on agreements, there are four case studies and you will be asked to determine what type of agreement is appropriate for each. Following that are answers for each question. Should you have additional questions or need clarification regarding the answers given, please contact your supervisor.

SECTION 1

Preliminary Interventions	This section outlines the role of the Department and community with respect to reporting and investigating children believed to be in need of protection.

SECTION 2

Confidentiality	This section outlines the conditions under which information can be shared with the community and other professionals.

SECTION 3

Agreements	This section outlines the nature of a voluntary agreement between the Department and guardian(s) regarding support and/or custody provided to a child or family as it relates to the child's need for protection. It also describes permanent surrender to the Department for purposes of adoption.

SECTION I - PRELIMINARY INTERVENTIONS

Under the Child Welfare Act, the Department and community have specific responsibilities with respect to reports of children believed to be in need of protection. This section will outline these responsibilities, and in addition, describe a provision in the legislation for emergency care of children. Through the legislation on Preliminary Intervention the government and community can appropriately report, investigate, and deal with children in need of protective services.

Community

With respect to the community's responsibility, Section 3 of the Act states that:

> Any person who has reasonable and probable grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to a director.
>
> (C.W.A. Section 3(1))

The Act also states that:

> a. this information is confidential and its disclosure is prohibited;
> b. if a peace officer believes a child has committed an offense under the Act of Parliament of Canada while the child is under the age of 12, the peace officer may report it to the director (Section 4);
> c. while solicitor-client information is privileged, there is a legal obligation upon the rest of the professional and non-professional community to report a child in need of protective services.
>
> Failure to report a child believed to be in need of protection is punishable by a fine of up to $2,000 (and in default of payment, imprisonment for a term of not more than six months).
>
> (C.W.A. Sections 3 and 4)

Department

The Department's responsibility is contained in Section 5 of the Act:

> A director shall examine a report made, and any other allegations or evidence, and shall cause the matter to be investigated unless:
>
> a. the report or allegation was malicious;
> b. the report was made without reasonable or probable grounds;
> c. the report or allegation is unfounded; or
> d. it would be consistent with the protection of the child to refer a member of the family or family to community resources for services.
>
> In accordance with Departmental policies, investigations must commence within three (3) days of the report. If the child is reported to be in imminent danger, the investigation will commence within one (1) hour. Also, a decision must be made on the case within thirty (30) days.
>
> Under Section 5(1)(d) of the legislation, the worker may refer the child to a community resource when such action is also consistent with the protection of the child. It is good practice to follow up the referral with an agency contact to see if the problem is resolved. It is also incumbent upon the community agency to report any information indicating the need for protective services.
>
> (C.W.A. Section 5)

Referral of child welfare cases to community agencies is also consistent with Section 2 of the legislation (Matters to be Considered). Section 2 emphasizes utilization of appropriate familial and community resources that may be available. It also stresses the principle of least intrusion. By referring families to community agencies, the worker is initiating preventive measures that not only comply with the principles of the legislation, but also may provide the support necessary for resolving the protection issue, thus removing the need for further involvement of the Department.

Emergency Care

Section 6 of the Act allows the Department to provide short-term emergency care for children rather than initiate more intrusive interventions such as apprehension. Under this section a director may appoint a person to enter the home and care for a child, if the director is satisfied that the child is in need of protection because the guardian(s) cannot be located, or is/are incapacitated (e.g. involved in a car accident or too ill to care for the child).

The emergency care giver can, for up to forty-eight (48) hours:

- enter the home and live in it;
- carry out normal housekeeping duties that are necessary for the care of the child;
- exercise reasonable control over all children living in the residence.

No liability can be attached to the person for carrying out these duties.
(C.W.A. Section 6)

In some cases this intervention is sufficient to resolve the problem. In other instances this intervention permits the worker to maintain the children in the existing family structure during the investigation of the problem.

It is also important to note that if the child is removed from the home by the Department, this would be considered an apprehension rather than emergency care.

Exercise

Please mark either true or false for each of the following statements:

True False

1. A medical doctor is not required to report a child he/she believes to be in need of protective services. ____ ____

2. All reports of children in need of protective services are held in confidence by the Department. ____ ____

3. Emergency care legislation permits the Department to remove children from their home and place them with an emergency care giver, if the guardian cannot be located. ____ ____

4. Emergency care can be provided for a period of up to a maximum of seventy (72) hours. ____ ____

Please complete the following sentences by inserting the correct word or phrase into the blank.

5. If a peace officer believes a child has committed an offense under an Act of the Parliament of Canada, the peace officer may report it to a director if the child is under _____ years of age.

6. In terms of reporting a child in need of protection, the only privileged relationship is that of a ________________________.

7. The director shall investigate a report unless it was __________________ or ____.

Answers

1. False. The only relationship that is privileged is a client-solicitor relationship.

2. True, although it may be appropriate to caution the person making the report that in some circumstances confidentiality cannot be maintained (e.g. a judge may order release of the name of the person who made the report, the person may be called as a witness, etc.).

3. False. The care-giver must enter the home of the child. If the child is removed from the home by the Department, this would be considered an apprehension.

4. False. The maximum is forty-eight (48) hours. (This is Departmental policy and not legislation.)

5. 12 years (Section 4)

6. Client-solicitor relationship

7. Two of the following:

   a. malicious
   b. unfounded
   c. made without reasonable and probable grounds.

References

1. Alberta Social Services
   Handbook - Child Welfare in Progress
   Tab 03 - Pages 4 and 5, Pages 11 - 14

2. Alberta Social Services
   Program Manual - Child Welfare in Progress
   Chapter 2 - Pages 13 - 20

3. American Humane Association - "Helping in Child Protective Services: A Casework Handbook"
   Pages 100 - 125

SECTION II - CONFIDENTIALITY

Confidentiality describes what information can be shared with whom.

This section addresses the principles of sharing information for the purposes of carrying out the intent of the Act, and protecting the rights of individuals affected by the sharing of such information.

1. With the exception of the adoptions sections 65 and 66 of this Act, the Minister or any person employed or assisting in the administration of the Act, shall preserve secrecy with respect to name and other identifying information of a person that comes to his attention under the Act, and shall not disclose or communicate that information to any person except to:

   a. the guardian, parent or foster parent, or the lawyer of any of these;
   b. the child to whom the information relates, or his lawyer;
   c. a physician, certified psychologist, registered social worker when information relates to assessment or treatment of the child;
   d. a member of the police force or an agent of the Attorney General, if information is related to the belief an offense under an Act of the Parliament of Canada has been committed;
   e. a teacher, if he/she has responsibility for the education of a child to whom the information relates;
   f. the board of an approved hospital or health unit responsible for providing services to whom the information relates;
   g. any person employed or engaged by the Minister or assisting in the administration of the Act;
   h. any person assisting the Minister in the Administration of this Act;
   i. any person employed in child protection in another Province;
   j. any person who has the written consent of the Minister, the child or guardian of the child.

   (C.W.A. 91 (2))

2. Information shall not be disclosed or communicated without the consent in writing of the Attorney General or his agent, if that information was provided by any agent of the Attorney General.

   (C.W.A. 91 (3))

3. The name of a person who reports to the Minister shall not be disclosed or communicated to any person without the consent of the Minister.

   (C.W.A. 91 (4))

4. No liability attaches to the Minister or any other person who discloses or communicates information in accordance with this section if the disclosure or communication is made in the administration of this Act or for the protection of the child.

   (C.W.A. 91 (5))

5. Any person who contravenes this section is guilty of an offense and liable to a fine of not more than $2,000 and in default of payment, to imprisonment for a term of not more than six months.

   (C.W.A. 91 (6))

While wanting to share information with all people who can act in the best interests of the child, it becomes clear that the communication of information should be done with great discretion and clearly only in the interest of serving the child's needs.

Basically confidentiality calls upon your good common sense as a child welfare worker.

Example:

A. When meeting with a child's teacher, discuss only the information pertinent to the child's education, training and behavior in the classroom.

or

Describe a child who has been consistently physically abused and confined in terms of their need for predictability, consistency and ability to move around the school setting whenever appropriate. Not all the details of how they were abused need to be communicated to the teacher.

B. Disclosing information from a child's file to a probation officer requires the Minister's (or his/her disignate's) written consent.

The following sections of the Act address the sharing and control of information in the process of developing and delivering child welfare services:

Section 23 - Ban on Publication:

This section refers to the fact that court is open to the public, and the need for workers to be sensitive to clients' rights to privacy.

It is important to note that the ban on publication of names refers only to the child and his guardian, but not to the names of workers and other witnesses, e.g. foster parents.

Section 65, 66, 67 - Sharing of Adoption Information

Section 65 - allows for a passive adoption registry and obtaining information concerning biological parents and adult siblings. (For more detail please refer to manual #6.)

Section 66 - allows an adopted person age 18 or over to obtain from the Court or the Minister, a copy of his/her adoption order. This order will bear his/her original name. Parental or department consent is not required.

Section 67 - allows for disclosure of non-identifying information regarding the parties involved in an adoption, e.g. hair color, eye color, medical information.

Section 75 - Confidential Evidence:

The Child Welfare Act increases the child welfare worker's options for obtaining information from other agencies. For the first time, Section 75 allows for access to confidential information from agencies covered by other legislation.

Records, documents and information may now be subpoenaed through the Court from:

a. the Commission under the Alcoholism and Drug Abuse Act;
b. a Board under the Hospitals Act;
c. a Board under the Mental Health Act;
d. the Director under the Public Health Act;
e. the Director under the Venereal Diseases Prevention Act.

The issue of client confidentiality can be a difficult one for the child welfare worker. Your goal should be to give people working with the family enough information so that they can make an informed decision regarding the client. Information that is not relevant to that decision should be excluded.

Exercise

TRUE FALSE

1. The Child Welfare Act regarding Ban on Publication protects the child, his or her guardian, and anyone acting on behalf of the Department from having their name published. ___ ___

2. Adopted persons over the age of 18 can obtain information concerning biological parents and adult siblings without parental or Departmental consent. ___ ___

3. Access to confidential information from agencies covered by other legislation is now available. ___ ___

4. Child welfare workers can give out any information they please about their client(s). ___ ___

Answers:

1. False. Only the child and the guardian of a child is exempt from publication.

2. True.

3. True. A list of these can be found in the Act, Section 75(1).

4. False. Under Section 91 there are certain people with whom you can share information. Discretion should be used in all cases as to what information is disclosed. Inappropriate disclosure of information may result in legal action being taken.

References

1. Alberta Social Services
Handbook - Child Welfare in Progress
Tab 03 - Pages 44 and 45, 89 - 92, 98 - 101, 112 - 114

2. Alberta Social Services
Program Manual - Child Welfare in Progress
Chapter 12 - Pages 157 - 158
Chapter 14 - Pages 194 - 196
Chapter 15 - Page 210

SECTION III - AGREEMENTS

Agreements are voluntary arrangements to provide support and service to a child and/or family when a child is in need of protection. Agreements are made between a director and the guardians of the child; however, under some circumstances, the agreement can be made directly with a youth who is over sixteen years of age. Through these provisions the Department can provide support to a family, while at the same time maintaining the integrity of the family unit.

This section will cover:

- Support Agreements
- Custody Agreements
- Permanent Guardianship Agreements

Agreements concerning access and maintenance as they pertain to temporary guardianship orders will be covered in another section.

Support Agreements

Support agreements are designed to provide the family with the service and support necessary for alleviating the risk to the child while maintaining the child in the family.

Support Agreements (Under 16)

CONDITIONS: UNDER 16 YEARS	EXAMPLE
1. Child must be in need of protection. 2. Parents are willing to cooperate with Department in the provision of services intended to alleviate the problem. 3. The child's security and emotional development can be maintained while he/she stays in the home. 4. There must not be neglect or abuse to the degree that apprehension is necessary. 5. The child must not be under an HCS agreement. A case plan is developed with the family outlining services the Department will provide, and the roles the family members will play in eliminating the risk to the child. A case plan must be developed within 30 days of an investigation referral. It must be reviewed and updated every 90 days.	An 11-year-old boy was caught shoplifting at 11:30 p.m. on a school night. Child Welfare was contacted and during their investigation the store owner reported the child is frequently in the store late at night playing video games. It turns out the mother works evenings as a waitress and can't always get babysitting. The child welfare worker may consider entering a support agreement to: a. have the child attend a youth program twice a week for recreational activities and help with homework; b. bring in a babysitter until the mother can provide better supervision. c. obtain the services of a community youth worker for the child. (C.W.A. Section 7 (1))

Agreements are up to six months in length, with renewals of up to six months. There is no limit on the number of support agreements which can be made.

The Case Plan might include the following:

Financial Agreement through Departmental assistance with the costs of babysitting until mother can arrange more permanent help.

Mother pays cost of transportation to the Youth Program.

Career placement counselling for mother to assist her in acquiring a day job or skills that will give her additional choices.

Child developing a recreational interest that will allow him to gain entry into a more constructive support group in the community.

The goals of the case plan would be achieved if mother provided adequate supervision and the child developed a more "normalized" evening routine.

If the situation deteriorated with the boy refusing to become involved and remaining on the streets at night, more intrusive action may be deemed necessary.

Custody Agreements

These agreements allow for the voluntary and temporary transfer of custody of the child from a guardian to a director, when the child is in need of protective services and it is clearly of benefit to the child to be temporarily removed from the family home. In a custody agreement, the guardian(s) still have the primary responsibility for the child and as such must be involved with the child in making major decisions concerning the child's welfare.

Custody Agreements

CONDITIONS	EXAMPLE
1. Child is in need of protective services. 2. Apprehension is not required. 3. The survival, security and development of the child cannot be adequately protected if the child remains with his/her guardian. 4. The parents or guardians are willing to cooperate in implementing case plan. 5. The child is consulted before the agreement is taken (if child is old enough and capable of understanding the terms of the agreement). A child of 12 or over must be consulted. 6. Custody Agreements are up to six months in length, with a limit of two years. 7. A case plan is developed outlining roles and responsibilities of parents, Department, child and any related agencies or persons involved in alleviating the risk to the child. 8. The case plan includes a description of the services to be provided. 9. Visits or other access are provided between child and his guardian or any other person who may act in the child's interest. 10. The authority is delegated by the child's guardian to a director. 11. Contributions, financial or otherwise, to be made by the guardian for the maintenance of the child while the child is in the custody of a director.	A 14 year old who constantly runs from home - refuses to return or stay - parents cannot provide care due to illness. Child at risk due to lack of supervision. Parents wish to remain involved. Custody agreement is taken and child is placed in an adolescent receiving centre for assessment purposes. Parents to provide $100.00 per month maintenance and provide all clothing. Parents visit every Sunday - half the time spent receiving coaching from assessment centre staff while the other time is spent on an outing or other activities. (C.W.A. Section 8 (1))

The intent is to provide temporary support, placement and services which will enable a child to return to his/her home. The guardian has primary control and responsibility for the child, in preparation for the return of the child to the home and community as soon as the risk to the child has been alleviated.

Agreements With 16 and 17 Year old Youths

The Child Welfare Act recognizes that 16 and 17 year-olds have unique needs that are different than the needs of their parents and the needs of children in younger age ranges. Therefore, in certain circumstances, support and custody agreements can be signed with children who are sixteen or seventeen years of age.

Agreements (16 and over)

*CONDITIONS

1. Apprehension is not required.
2. The child can handle this responsibility and has the capacity to make this decision.
3. The child is capable of living independently or with someone other than his guardians.
4. The child can understand and is willing to meet the terms of the agreement.
5. A Director is satisfied the child is living independently of his guardian.
6. The child is in need of protective services.
7. As a result of the provision of support services, the child's survival, security or development will be adequately protected if the child continues to live independently of his guardian.
8. Parental agreement is not required.

EXAMPLE

Custody Agreement

A 16 year-old boy has been living in a foster home for the past year under a temporary guardianship order which is about to expire. The boy wishes to remain in the home until he completes a trade course and gets a job. The Department may sign a custody agreement with the child to cover the cost of his maintenance, plus tuition and living expenses for a month after the completion date of the course.

* For both support and custody agreements, an assessment must be made indicating that the parents are unwilling or unable to ensure the safety, security and development of the child.

Support Agreement

A 17 year-old girl is living with a neighbour. Her mother has remarried and she and the new step-father do not get along. Mother supports her new husband. The girl wishes to complete her grade 12, but her parents refuse to provide support unless she "returns home and behaves." A support agreement can be taken to provide:

1. Life Skills training,
2. Counselling for the entire family.

* Same conditions for both types. The difference is that a custody agreement is needed if the child is placed we in one of the Department's approved facilities.

(C.W.A. Section's 7 (2) & 8 (2))

Permanent Guardianship Agreement

A permanent guardianship agreement is entered into when a guardian or parent feels he/she can not adequately ensure the well-being and protection of the child and wishes to permanently relinquish guardianship rights. This usually happens at birth when an unwed mother wishes to surrender a child for adoption.

CONDITIONS	WORKER TO ENSURE THE FOLLOWING:
1. Child has been in the custody of his guardian for less than six months. 2. Agreement is binding on any parent who, at the time, was not a guardian of the child, whether or not they had notice of the agreement. 3. The Children's Guardian becomes the sole guardian of the child.	Prior to entering into a permanent guardianship agreement, the worker shall ensure that: 1. The guardians are capable of understanding the intent and purpose of the agreement. 2. The guardians are made aware in writing that only the Children's Guardian can make application to terminate the agreement after the child is more than 10 days old. 3. Unwed mothers are advised that a putative father or any person claiming to be a parent may apply to terminate the agreement within 10 days of the birth of the child. (Wherever and whenever possible, seek the written agreement of the putative father.) 4. That the requirements of Section 73(2) and 73(3) must be satisfied when a child is believed to be Indian and a member of a band. 5. A comprehensive medical and social history is completed on the approved form. (C.W.A. Section 10 and 11)

*NB Failure to receive notification or agreement from the putative father may disrupt an adoption placement. Please refer to Program Manual, Chapter 13, PM 165

Exercise

1. When we sign custody agreements, does guardianship still remain with the parent(s)?

2. Do we terminate custody agreements with 16 and 17 year-olds if they marry?

3. When an unmarried mother is undecided about keeping her child, can a custody agreement be taken? If so, how does this fit under the definition of a child in need?

Answers

1. Yes. The parent may delegate some of their guardianship authority to a director; however, they retain the primary guardianship responsibility.

2. Yes. Policy Handbook PO 3-24.

3. Yes. This could be a case of a mother unwilling or unable to care for a child.

References

1. Alberta Social Services
Handbook - Child Welfare in Progress.

2. Alberta Social Services
Program Manual - Child Welfare in Progress.

3. Alberta Social Services
"Native Child Welfare Services Practice Guidelines".

4. Alberta Child Welfare Act.

5. American Humane Association
"Helping in Child Protective Services: A Casework Handbook".

Summary

The way in which you understand and implement the sections of the Act on preliminary interventions and agreements is very important because it has a significant effect on case outcome. These sections are designed to maximize the opportunity for client participation and cooperation in the case plan. In addition, these sections of the legislation allow for the participation of community resources, whenever possible. These interventions, therefore, influence the degree of the client's involvement throughout the duration of the case. This not only affects case outcome, it could also affect the strength of application for court orders, should they be required.

Case Studies

On the following pages are three case studies involving the application of the legislation covered in this manual. Please read each case study carefully and then answer the three questions in the space provided on the page following each case study.

Once you have completed the case study check your answers with the Answer Sheets at the end of the manual. The Answer Sheets represent an attempt to provide you with an outline of the factors affecting the course of action that could be selected, rather than a black and white solution to the case.

CASE STUDY #1

Child: Tina Lumumba
Age 16
Location: Edmonton

Father: Ralph Lumumba
Location: Edmonton

Mother: Esther Kwasame
Benine City, Nigeria

Circumstances Precipitating Child Welfare Involvement:

Tina called the Crisis Unit on September 15 alleging her father had abused her and forced her out of the family home. Tina was seen by the Crisis Unit worker at the home of a neighbour, with whom she had been living off and on for three months. Crisis did not find any physical signs of abuse, and asked that the father and child meet with them to discuss the situation.

Family Background:

This family emigrated from Nigeria. There is a long history of marital and family discord, and Mrs. Lumumba returned to Nigeria shortly after she arrived. Tina was 12 when the family emigrated and has had some difficulties in adjusting to the language, the culture and the climate; however, she is unwilling to consider returning to Nigeria.

Assessment:

This is a family for whom cultural issues have become problematic. Mr. Lumumba has retained his traditional Nigerian values about the roles of women and children and expects Tina to "fill her mother's shoes" in that regard. He has extremely high expectations of Tina in regard to academic achievement, and very strict rules with regard to Tina's participation in social activities, e.g. dating, dances. He is an uncommunicative man when it comes to family issues and feels these should be solved "within the family".

Tina is experiencing difficulty in several areas. Superficially, she has adjusted to the cultural change, but is an isolated child with few friends, and no female role models. She is having some trouble with school, although she is in Grade 11. She is very attached to her father but very angry with his inflexible expectations.

Summary:

An impasse exists between Tina and her dad; Tina is unwilling to come home until things change and her father won't talk about anything until she comes home. Both these people are culturally and socially isolated to some extent, and have poor skills in communicating with each other in a way which is culturally appropriate in Canada.

Questions:

1. Is this a case for which you would consider an agreement?

2. If yes, what kind of agreement would be appropriate?

3. What terms or conditions would you want to consider in an agreement?

CASE STUDY #1 ANSWERS

1.

2.

3.

CASE STUDY #2

Children: Kari Jones
Age 2
Danielle Jones
Age 6

Mother: Karen Jones
Age 23

Circumstances Precipitating Child Welfare Involvement:

Willow Park received a complaint from the caretaker of Karen's building stating that conditions were extremely unsanitary, and that Public Health Inspectors had been called. The caretaker also reported that the children were often left alone and found wandering in the parking lot of the building, dirty and poorly dressed. Workers were unable to find the mother at home on the occasions when they visited, and finally had the caretaker page the child welfare worker one evening when mother was home. A previous file existed on this family which documented mother's transience, poor housekeeping standards, poor parenting skills and suspicions of illegal activities. The record also showed that Danielle had been apprehended because of physical abuse by the mother and remained in our care for a year, until the court ordered the child returned.

Family Background:

Karen's file indicated that she had been a ward in another province, was apprehended at age 5 because of abuse, and was, after a fairly stable placement history (2 moves), adopted at age 8. She was a difficult child for the adoptive family: strong willed, and still suffering to some extent because of the emotional scars left by her early life. When she turned 17, Karen left home, although she has remained in touch with her adoptive parents, who now live in B.C.

Assessment:

Karen is a highly manipulative woman, of average intelligence, who is unable to plan or carry out any activity in a systematic way. Her parenting is inconsistent, ranging from strict and severe, to disinterested. She is extremely impulsive, as can be seen by her transience. She is very attached to her children but often uses them to meet her own needs, e.g. asking Danielle to make breakfast "because mummy is too tired".

The children are showing several symptoms which raise concern. Danielle, who is in Grade 1, is very small for her age, shows some speech difficulties, and has been evaluated by the teacher as likely to repeat Grade 1. She is a very guarded child, highly anxious, who shows little ability to play. Kari, age 2, is also extremely small for her age, and is not keeping up to developmental milestones. She didn't walk until 20 months, and is still not talking; the public health nurse speculates that she may have hearing difficulties. She is a very solemn child, who cries easily and frequently.

Questions:

1. Is this an appropriate case for an agreement? If so, what kind?

2. What other action could be initiated?

3. On what issues would you base your action?

CASE STUDY #2 ANSWERS

1. ____

2. ____

3. ____

CASE STUDY #3

Child: Gail Brown
Age 17

Father: Robert Brown

Mother: Brenda Brown

Circumstances Precipitating Child Welfare Involvement:

Gail Brown came in to see a child welfare worker on her own, alleging severe emotional and verbal abuse by her mother, and saying she couldn't live at home any longer. Gail was brought to Social Services by neighbors, Mr. and Mrs. MacDougal, who have known the family for many years and confirmed Gail's allegations.

Family Background:

Gail is the youngest of three children born to Mr. and Mrs. Brown. The Browns are divorced, and Mr. Brown has subsequently remarried and has another family. Mrs. Brown has a long history of mental illness requiring hospitalization. The family has endeavored to care for mother but Mr. Brown finally felt he could manage no longer and separated from his wife. Gail's older siblings helped in managing mother's illness, but left home as soon as they could and refused to care for her. This has left Gail as the primary caretaker of her mother.

Assessment:

This is a family for whom the demands of one family member have proved overwhelming. None of the family members has the emotional resources to cope with Mrs. Brown, who is demanding, suspicious, and occasionally assaultive. She is a highly verbal woman who barrages her daughter with complaints and accusations. The primary focus of her verbal aggression is her family; her social presentation can be quite pleasant.

Gail is a depressed, defeated child. She is involved with other children who are involved in drug abuse. Gail is currently living with the MacDougals, who describe her as having two sides to her nature. She can be thoughtful and generous when circumstances are pleasant; however, if she is involved with her mother or is confronted by school authorities she is defiant, verbally abusive, very restless, and sometimes runs. Gail is still managing well in school, maintaining a "B" average; however, her grades have been slipping of late.

Questions:

1. Is this an appropriate case for an agreement?

2. If so, what kind would you initiate?

3. What would you include in the terms of the agreement?

CASE STUDY #3 ANSWERS

1. ____________________

2. ____________________

3. ____________________

ANSWER SHEETS FOR CASE STUDIES

The intent of the legislation is to provide you with options and flexibility in your dealings with families. For the case studies in this section you should consider the possibility of using either a support or custody agreement signed either with the family or with the child, if the child is over 16 years of age. Given certain factors and the terms you are able to negotiate, an agreement of either kind might be appropriate. Please remember, however, that you are not limited to only those alternatives in your social work practice; more intrusive measures may be appropriate.

CASE STUDY #1 ANSWER SHEET

1. Q. Is this a case for which you would consider an agreement?

   A. Yes. There are allegations of physical abuse which need to be followed up; Tina is of an age where she can be on her own with some support.

2. Q. If yes, what type of agreement would be most appropriate?

   A. Based on the information, an agreement signed with Tina's father is unlikely; he is unwilling to have "strangers" involved in family problems. Therefore, in Tina's case, you have two alternatives which will be based on your assessment of her strengths and weaknesses:

   i. support agreement with 16 year olds (Youth Support Agreement). If Tina has some life skills (e.g., banking, grocery shopping, some ability to budget), Departmental funds could be provided to her with the responsibility for administering those funds.

   ii. custody agreement with 16 year old: If your assessment suggests Tina is moving toward independence but has only limited skills, then you and she may wish for an agreement which provides the closer supervision of a custody agreement.

3. Q. What terms or conditions would you want to consider in an agreement?

   A. Support agreement terms could include the following:

   a. phone call from Tina to her worker at least 1/week.
   b. home or office visit with Tina at least 1 every 2 weeks.
   c. home visit with Tina and neighbor 1/week.
   d. identification of independence issues Tina needs to work on e.g. banking, budgeting.
   e. cultural issues: connection with Nigerian settlement group.
   f. further assessment and exploration of the problems involved in Tina's relationship with her father.

CASE STUDY #2 ANSWER SHEET

1. Q. Is this an appropriate case for an agreement? If so, what kind?

A. Yes, with very specific terms attached. You should be very careful in taking an agreement of any kind in this case because of the serious protection concerns presented. Given the circumstances, it would be risky to sign a support agreement, because you would have a hard time being sure mother would be around to honor it. If you did wish to sign an agreement, indications point to the need for a period of time in care as an appropriate possibility, so you might want to try to sign a custody agreement. The custody agreement would also need to be very specific about other terms. For example:

1. medical evaluation of both children for general health issues, developmental delays, intellectual functioning, indications of abuse;
2. possible psychological evaluation of Danielle;
3. regular and frequent visits with the children while out of the home;
4. use of a parent aide in some of the visits to assess mother's parenting skills and ability to nurture her children.

2. Q. What other action could be initiated?

A. There are several alternative routes you could pursue; these other interventions will be covered more extensively in the module on court. Briefly, however, they can be summarized as follows:

a. supervision order - this would leave the children in their own home but would allow access on a Court-ordered basis;
b. application for temporary guardianship order - this would allow for the non-emergent placement of the children in an alternative setting;
c. application for apprehension order - would permit the removal of the children from their home without their mother's approval.

Use of c) as an alternative should only be considered when your assessment indicates that the children are not safe remaining in the care of their mother any longer.

3. Q. On what issues would you base your action?

A. Your assessment of the family situation remains key to your ability to intervene in a way which is the most helpful to the family with whom you are working. Your paramount concern must be the safety of the children involved; any assessment of the parent's abilities, motivation and resistance must weigh and include the risks to the child in the decision.

CASE STUDY #3 ANSWER SHEET

1. Q. Is this an appropriate use for an agreement?

   A. Yes, this is another instance where a child over 16 may be in need of protective services.

2. Q. If so, what kind would you initiate?

   A. In Gail's case, you have little indication of her ability to manage on her own. Unless your investigation gives you information to the contrary, your first option should be to sign a custody agreement directly with her. Gail has known her current caretakers for many years, and has a relationship with them. She is manifesting behavior problems; there is suspected drug abuse, and poor school performance, nor has she to our knowledge, come to terms with her "responsibility" for caring for her mother. All these issues indicate that a support agreement would not meet Gail's needs.

3. Q. What would you include in the terms of the agreement?

   A. Custody agreement terms might include:

   a. negotiated rules for conduct between Gail and the MacDougals, e.g., chores, curfews, visits with family.

   b. identification of life skills/independence needs, e.g., banking, grocery shopping, attendance at school, birth control, etc.

   c. self-referral by Gail to AADAC for consultation about her drug abuse.

   d. discussion with her social worker about her relationship with all family members.

APPENDIX
ANALYSIS OF CASE EXAMPLE
FROM VIDEO #3
"AGREEMENTS AND SUPERVISION ORDERS"

On the following pages is the analysis of the case example presented at the end of the video entitled "Agreements and Supervision Orders". This analysis represents an attempt to review the factors affecting your decision and some possible courses of action.

There are no black and white solutions to these cases, therefore, in "real life" situations it is also important to conference these cases with your supervisor and other professionals prior to taking any action (other than emergency action).

Case Example

Assessment

In this example there are two possible protection issues. The first issue is "Are any or all of the three children in need of protection because their survival, security or development is endangered due to a substantial risk of physical injury by the guardian (section 2(d))?" From the information presented there is no evidence of physical injury to the children and, although a further investigation of the situation is warranted, the children do not appear to be in "substantial" risk of physical injury in the future.

The second protection concern revolves around the behavior of the older boy. It is evident that the boy has been a behavior problem in the past and, because of his behavior, he has been removed from the home, for a period of time. His mother reports that he is out of control at home, and school reports also reflect some problems with his behavior in the educational setting. Under the Child Welfare Act if the "condition or behavior of the child prevents the guardian of the child from providing the child with adequate care appropriate to meet the child's needs" (section (1)(2)(i)), the child can be considered to be in need of protection. Therefore, depending upon the type, intensity, and degree of the behavior problems, the older boy may be in need of protection.

If the worker believes that the older boy is in need of protection, the next decision is the type of intervention required to resolve the problem. To make this decision the worker would need to assess the effectiveness of interventions that were used in the past. In addition any changes in the child's behavior, the child's willingness to become involved in the case plan, and the family situation; since these interventions occurred, would also need to be taken into consideration.

Investigation Outcomes

Option 1 Referral To A Community Agency And Termination Of Direct Departmental Involvement

If the child could be maintained in the home and the mother provided with the support that she needed through the intervention of a community resource (e.g. a day treatment program), then this would be the preferred option. In this case you may assist the mother with the referral and maintain periodic contact for the first thirty days to ensure that this arrangement satisfactorily addresses the protection issue. If after thirty days you believe that other action is necessary then departmental involvement options 2 or 3 might be appropriate. The possibility of having the older child stay with a member of the extended family who is better able to deal with his behavior might also be considered, if the child could not be maintained in his own home. This can be carried out with out further Departmental intervention.

Option 2 Support Agreement

If the child could be maintained in the family but the community resources were not available to provide the family with both the services and support they required, then a support agreement might be the most feasible option. Through a support agreement the family could take advantage of the community resources available and also receive additional support from the Department (e.g. counselling services for the child and mother, having a family support worker come into the home during critical periods of the day, etc).

Option 3 Custody Agreement

A custody agreement would be taken if the child could not be maintained in the family, even with the provision of support services. In this situation the child could be placed in a foster home or group home, for a short period of time. The case plan would focus on reduction of the child's problem behavior and, at the same time, coaching of the mother in behavioral management approaches.

Option 4 Court Order (eg: Supervision Orders)

A court order would not be appropriate in this situation because the mother is willing to work with the Department to resolve the problem.

Volume

3

PROGRESS

Alberta
SOCIAL SERVICES

ALBERTA SOCIAL SERVICES

Information Guide To The Child Welfare Act

Unit III

Supervision Orders
Apprehensions
Service for Court and
Rights of Appearance

CHILD WELFARE IN PROGRESS
December, 1986

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PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,

Helen Wentz
Senior Director
Family and Children's Services
Alberta Social Services

THE INFORMATION GUIDE SERIES

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1. BACKGROUND INFORMATION
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3. MATTERS TO BE CONSIDERED
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5. DEFINITIONS

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1. PRELIMINARY INTERVENTIONS
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UNIT VII

YOUNG OFFENDERS ACT

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UNIT III

The specific objective for this third module, as in the others, is to have you read the information and complete the final exercises, with little or no assistance. If you have additional questions that are not answered here, or if you have questions regarding the answers given, please consult with your supervisor.

SECTION 1

Supervision Orders	This topic covers circumstances where a child welfare worker may find it necessary to request a supervision order. It offers an explanation of a supervision order, review of an order, and breach of an order.

SECTION 2

Apprehensions	This topic deals with the two types of apprehension under the Act: non-emergency and emergency apprehension. Issues following apprehension are covered, including a "demand notice."

SECTION 3

Service for Court and Rights of Appearance	Service for court and rights of appearance are summarized in a chart.

HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute videotapes that may be available to you.

The overall objective of these modules is to give you, the child welfare worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

INTRODUCTION

The Act has given new significance to the supervision order (Sections 14 and 26). Workers are able to have court-ordered access to a family in order to provide the supervision necessary to protect a child.

As with all orders, a child must be in need of protective services. We must prove a supervision order is necessary to ensure that "survival, security, or development" is protected. Finally, we must believe or be able to show that there are reasonable and probable grounds that the child's "survival, security or development" will be adequately protected through supervision.

While keeping in mind the Department's philosophy and policy recognizing the family as the primary functioning unit and the importance of supporting and preserving its well-being, child welfare workers do come across situations and conditions that make it necessary to act on a child's behalf when she is in need of protective services. Instances arise in which the force of the court may be the most appropriate and least intrusive way of ensuring that a child is protected while still remaining in her own home.

SECTION 1 - SUPERVISION ORDERS

If, in the opinion of the child welfare worker, a child is in need of protective services, and other services have proven insufficient, the worker may act on behalf of a director and apply for a supervision order. There are two different methods for applying to court to obtain an order. One is the direct application process which avoids the use of apprehensions. Application may be made directly to the court for a supervision order, temporary guardianship order or permanent guardianship order, providing the child's survival, security and development is not endangered if left in his present situation. The other method of obtaining an order is following apprehension. This will be discussed later.

A supervision order is an order which a judge gives to a director. It gives that director the authority to intervene and supervise a family in a case where a child or children are found to be in need of protective services.

In keeping with Departmental policy, this maintains the integrity and stability of the family, but allows the Department to provide any needed support to the child or children.

When a child welfare worker makes an application for a supervision order on behalf of a director, the court may grant a supervision order for a period of not more than six months, if:

a. the child is in need of protective services;
b. supervision of the child and persons with whom the child resides is necessary to ensure that the survival, security or development of the child is protected;
c. there are reasonable and probable grounds to believe the child will be adequately protected as a result of the supervision; and
d. all persons residing with the child will comply with the terms of the order.

(C.W.A. Section 14)

How to Apply	Example
1. Apply on the prescribed form (SSCH 1594). 2. Include with the application recommendations with respect to the terms of the proposed supervision. 3. Present a documented case plan to court which includes: ° statement of the problem ° the assessment and treatment plan of the child and/or any persons residing with the child ° proposed services to be provided or facilitated by the worker ° the proposed frequency of visits by the worker to the child and family ° all other terms deemed necessary ° the intended outcome of the intervention	A 12 year old girl is being abused by her mother's boyfriend. Mother agrees to protect her daughter and keep the boyfriend out of the home. Application for a supervision order - terms to include: 1. Worker to visit home once a week. 2. Daughter to attend weekly counselling sessions at the Family Service Bureau re: sexual assault. 3. Mother to transport child to and from counselling. 4. Boyfriend not permitted in the home or to have contact with the child. 5. Outcomes: As a result of successful treatment, child is able to relate to males in a healthy manner. 6. Mother's failure to protect the child will result in child's removal from the home.

The child welfare worker must make every attempt to reach agreement with the child, family and other affected persons on the case plan prior to the court hearing. The worker shall arrange for a hearing within thirty calendar days following the filing of a direct application for a supervision order. If the child is known or believed to be Native Indian, the worker must comply with the conditions stated in sections 73(2) and 73(3) of the Act. A supervision order may be for up to six months, but since custody and guardianship remains with the family, there is no limit to the number of orders which may be sought.

Review of Supervision Order

Once the Court has made an order it may be reviewed:

a. at any time, on application of a child welfare worker (on behalf of a director);

b. once during the term of the order, on application of

   i. a guardian of the child, or
   ii. the child, if the child is 12 years of age or over.

(C.W.A. Section 30 (1))

The Court may consider all relevant matters, including:

a. whether the circumstances that caused the child to be in need of protective services have changed;

b. the protective services that have been provided to the child or the family;

c. whether the case plan that was filed with the Court has been followed;

d. whether the guardian has complied with the order and terms of the order.

(C.W.A. Section 30 (2))

On hearing the evidence at the review, the Court may:

a. continue, vary or terminate the original order;

b. make a new order under Section 26 (supervision order), 29 (temporary guardianship order), or 32 (permanent guardianship order); or

c. extend the period of the original order.

(C.W.A. Section 30 (3))

Breach of Supervision

If a guardian fails to comply with the terms of a supervision order, the court may make a temporary guardianship order or a permanent guardianship order in respect of the child without hearing further evidence that the child is in need of protective services. This section applies only if the guardian does not comply. The Court is restricted regarding which orders it may give under this section, as noted above. It may be preferable to pursue a review rather than a breach if your intent is not to seek guardianship specifically.

(C.W.A. Section 27 (1))

Exercise

		True	False
1.	In order to apply for a supervision order, a child must be under apprehension.	___	___
2.	A supervision order provides for the supervision of the guardian(s)/caretakers as well as the child.	___	___
3.	Once an application is filed with the Court, a hearing must be held within 90 days.	___	___
4.	There is no limit in the number of supervision orders that may be applied for.	___	___
5.	You do not need to file a case plan when applying for a supervision order.	___	___
6.	Supervision orders may be granted for 12 months at a time.	___	___
7.	When a supervision order is breached, another supervision order may be granted.	___	___
8.	Guardians relinquish their guardianship rights under a supervision order.	___	___

Answers

1. False. Supervision and other orders can be applied for directly.
2. True. The Court can set all inclusive terms.
3. False. The hearing must be held within thirty days.
4. True.
5. False. Case plans are required on all cases.
6. False. Supervision orders are granted for a 6 month time period; however, there is no limit on the number of times the order can be renewed.
7. False. When a supervision order is breached, only temporary or permanent guardianship can be ordered.
8. False. Guardians maintain their guardianship rights under a supervision order. However, under a custody agreement some guardianship responsibilities may be delegated to a director.

References

1. Alberta Social Services
   Handbook - Child Welfare in Progress
   Tab 03
   Pages 04 - 10, 31 - 32, 46 - 47, and 52 - 53.

2. Alberta Social Services
   Program Manual - Child Welfare in Progress
   Chapter 5
   Page 31.

SECTION II - APPREHENSIONS

There are two types of apprehension under this Act. One is an apprehension order which is granted by a judge. The other is an emergency apprehension under Section 17(9), for which a judge's order is not required. Note that when apprehending a child of age 16 or 17 it is mandatory that you obtain an apprehension order; an emergency apprehension is NOT permitted on children of this age.

The seriousness of the decision to apprehend is such that, if at all possible, workers shall consult with their supervisor prior to proceeding.

The criteria of the Act regarding the definitions of a child in need of protection must be considered (e.g. age, mental capacity), as well as the capacity of the caretaker to protect the child, and the nature of the situation.

Non-Emergency Apprehension

If a child welfare worker has reasonable and probable grounds to believe that a child is in need of protective services, the director may make an ex parte (one-sided) application to a judge of the Provincial Court:

° Authorizing the director to apprehend the child

OR

° If the judge is satisfied that the child may be found in a place or premises, authorizing the director, a child welfare worker or any person named in the order and any peace officer called upon to assist him to enter, if necessary by force, that place or premises and to search for and apprehend the child.

° If, in the opinion of a director, it would be impracticable to appear personally before a judge to apply for an apprehension order in the case of late nights, weekends, distance, etc., the child welfare worker, acting on a director's behalf, may make application by telephone or other means of telecommunication to a judge of the Provincial Court designated by the Chief Judge of the Court. There are judges on call for this purpose.

° The information on which an application for an order by telephone or other means of telecommunication is based shall be given under oath and shall be recorded verbatim by the judge who, as soon as it is practicable, shall cause the record or a transcription of the record certified by the judge as to time, dates and contents, to be filed with the clerk of the Court.

(C.W.A. Section 17 (1) to (4))

The judge can dispense with a personal appearance and issue an order. This can include the same authority with respect to search and apprehension of the child.

Once the judge grants an order by telecommunication, then the child welfare worker must complete a facsimile for the file (SSCH 1636). The judge will complete and sign the order and file the order and a transcript of the recorded conversation with the court. Even though an order is granted, it is not necessary to execute the order and apprehend the child if further investigation finds the child not to be in need of protective services.

NON-EMERGENCY APPREHENSION

CONDITIONS	EXAMPLE
1. A statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice. 2. A statement of a director's grounds for believing that a child is in need of protective services and the identity of the child, if the identity is known. 3. A statement of a director's grounds for believing that the child will be found in the place or premises to be searched. 4. A statement as to any prior application for an order under the section in respect of the same child, of which the director has knowledge.	The child welfare worker on call is contacted at 11:00 p.m. Caller alleges that there are sounds of a child screaming in the next apartment. Worker goes to apartment - no one will answer, and sounds of sobbing heard. Worker consults by phone with the supervisor - phones judge for an apprehension order, giving all known facts. Worker is granted an apprehension order, fills out the facsimile, and contacts the police to assist in the search and possible apprehension. (C.W.A. Section 17 (5))

Emergency Apprehension

In cases where a child is in need of protective services and is:

a. abandoned, lost or without a guardian,

b. is a runaway, or out-of-control child,

c. "seriously and imminently endangered" with regards to physical injury or sexual abuse; i.e. extreme abuse has taken place, or there is substantial risk that the child will be physically or sexually abused,

the child welfare worker may apprehend without an order. The circumstances should be reviewed with a supervisor as soon as possible. Reminder: This does not apply to 16-17 year olds.

(C.W.A. Section 17 (9))

Following Apprehension

In keeping with the philosophy of the Act that the Department use minimal intervention and that the family is the most appropriate place to deal with family concerns, the Act provides for the return of the child within two calendar days of the apprehension without having to go to Court, providing the child's survival, security and development can be adequately protected in the custody of the guardians. If a child is not returned to the custody of a guardian within two days after being apprehended, the child welfare worker must apply to Court in the prescribed form for a supervision order, a temporary or permanent guardianship order, or an order returning the child to the custody of his guardian.

Upon apprehension, custody decisions are made by a director, including decisions regarding:

a. daily care and maintenance.

b. medical, dental or rehabilitative treatment, if two physicians or dentists recommend it, in the absence of consent of the guardian.

(C.W.A. Section 20 (1))

In the case where a child is apprehended strictly because the guardian refuses to permit essential medical, surgical or remedial treatment, a director must apply to the Court for an order authorizing treatment. In this situation, the physician must believe the child's life to be in imminent danger, and the caseworker needs to arrange for a hearing in the hospital.

(NOTE: The guardian at the time of apprehension remains the guardian and retains all the usual power for the consents and decision-making.)

The Court may authorize treatment in such instances and the person(s) treating the apprehended child are not liable because the child's legal guardian did not consent to the required treatment.

Example

An eight year old child is apprehended because the guardians refuse to permit the child to have a life-saving blood transfusion, on religious grounds. An order for treatment is applied for and granted by the Court. The child can then receive the blood transfusion without the guardian's consent.

Section 20(7) - confinement of a child under apprehension will be dealt with later in the module on Secure Treatment.

Demand Notice

Once an apprehension has taken place, a hearing must normally occur within ten calendar days. The one exception to this occurs when a guardian presents a director (or his designate) with a demand notice for a hearing. A notice can be presented upon apprehension, but only takes effect after the two day grace period for returning a child. The outside limit for presenting a demand notice is five calendar days following the apprehension.

Exercise

1. When returning a child to a guardian within two days of an apprehension, do we count:

   a. Saturday, Sunday and Holidays? ____

   b. the balance of the day the action took place? ____

2. Can police officers apprehend a child in need of protective services without a court order? ____

3. Please respond to the following questions:

		True	False
a.	Emergency apprehension can occur only with children under 16 years of age.	___	___
b.	An initial hearing after apprehension must occur within 30 days.	___	___
c.	A child may be returned to a guardian within 48 hours of an apprehension without a subsequent court appearance.	___	___
d.	Under apprehension, the department takes over guardianship responsibilities.	___	___
e.	When a director is presented with a demand notice, a court hearing must be held within 10 days.	___	___
f.	When a child is apprehended solely for medical treatment reasons, a court order must be obtained prior to the treatment taking place.	___	___
g.	A justice of the peace may be used to obtain an apprehension order if a judge in unavailable.	___	___
h.	Emergency apprehension may be used in cases of substantial risk of physical or sexual abuse.	___	___
i.	Two physicians are required to authorize medical treatment for a child under apprehension if the guardians do not consent.	___	___
j.	If a child welfare worker who has received an apprehension order is refused entry to a		

premises, he/she must return to court and request a search warrant. ____ ____

Answers

1. a. Yes
   b. No

   The Handbook reads "exclude the day of the apprehension and include the day the child is returned."

2. Yes. (Section 17, Sub-Section 9 of the Child Welfare Act)

3a. True. You must apply for an apprehension order for any child over the age of 16.

b. False. The initial hearing must occur within 10 days after apprehension.

c. True.

d. True. A director has guardianship responsibilities.

e. False. A court hearing must be held within one day.

f. True.

g. False. Only a Judge of the Provincial Court of Alberta can give the authority for an apprehension order.

h. True.

i. True. This assures prompt medical attention and impartiality on the part of the doctors.

j. False. A search warrant is not required if a child welfare worker has an apprehension order.

References

1. Alberta Social Services
Handbook - Child Welfare in Progress
Tab 03
Pages 30 - 31, 33 - 39.

2. Alberta Social Services
Program Manual - Child Welfare in Progress
Chapter 4
Pages 23 - 29.

3. Helping in Child Protective Services
Pages 53 - 78, 117 - 121.

SECTION III - SERVICE FOR COURT AND RIGHTS OF APPEARANCE

Service for Court involves serving notice to all involved parties in relation to a particular case. This allows for proper time preparation and input to the court from all appropriate persons.

Service Court includes the notice requirements and rights of appearance of all appropriate parties under the Act.

A summary of service for Court and rights of appearance is found in the Notice Requirements on the next page.

Some additional points to keep in mind are:

a. Court is open, i.e. public.

b. It is the responsibility of the worker to protect the family's right to confidentiality by requesting that court be closed, if she deems it to be necessary.

c. Section 25 - The Court has the ability to make any order under its jurisdiction (Part 4 and Part 3 of legislation) regardless of the order applied for by a director.

NOTICE REQUIREMENTS

SITUATION	SECTION C.W.A.	FORM/FORMAT	DISTRIBUTION	TIME LINES re: service	OTHER CRITERIA/ DEPARTMENT POLICY
1. Notice upon apprehending	18	oral or in writing - outlining reasons for apprehension and rights of guardian under S.19	to guardian(s) of the child	"forthwith"	1. reasonable effort 2. notice given in a prepared statement
2. Demand Notice	19(3)	prescribed form SSCH 1603	to director	day 3-5 after apprehension	
3. Notice in response to demand notice	19(5)	oral or in writing - giving time and place of hearing	to guardian(s) and the child if 12 or over	"forthwith"	hearing to take place not more than 1 day after director served a demand notice
4. Notice of application for an order after apprehension	19(7)	- giving prescribed time and place of hearing	to guardian(s) and the child if 12 or over	not less than 2 days	hearing to take place no more than 10 days after apprehension
5. Notice for other applications under Part 3 (i.e. an application for a supervision, temporary or permanent guardianship order)	21	personal service unless applicant makes ex parte application at any time before hearing and judge authorizes alternatives in S.21(3)	- to all guardians - a director, if not the applicant - child if 12 or over - foster parent if child in their care more than 6 months immediately preceding application - any other person in whose care the child was when apprehended, if she was in continuous care for of the person for more more than 6 months preceding the application	5 days unless provision of 21 (3) apply	Department policy is to make reasonable effort to serve any other person standing "in loco parentis", or a putative father who acknowledges paternity, has voluntarily provided care and support, or has demonstrated an intention to treat the child as his own

Issues to be Determined at First Hearing

- Age of Child (S. 76)
- Persons who have standing before the courts (e.g., who requires notice, who can be a party to the proceedings) (S. 77)
- Custody, if matter adjourned (S. 24(2))
- Access, if matter adjourned (S.24(2))
- Child's need for legal representation (S. 78)
- Persons (if any) to be excluded from the hearing (S. 22)
- Protection of rights of underage parent or guardian (S. 90) - a rare circumstance

WORKERS SHOULD BE PREPARED TO OFFER ASSISTANCE TO THE COURT REGARDING THESE MATTERS.

When a child's case is brought before the Court there are people who have varying roles, rights and responsibilities to be in attendance. A foster parent or any person who has had continuous care and custody of the child for not less than six months, or any other person with consent of the court, has a right to appear and make representations to the Court. Persons directly related to the proceedings may have a more responsible role, and a right to appear. This may include the child, the child's guardian(s), an applicant for joint guardianship, a director and/or legal representatives where appropriate.

The court reserves the right to exclude persons or publication which it deems are seriously injurious or prejudicial to the child. Further, it may exclude from the hearing, people and/or publication of information where it would not be in the best interest of the public, or infringes on the proper administration of justice.

The court may not exclude a director, the Children's Guardian or a lawyer representing any of the parties.

Exercise

	True	False
1. If necessary, it is the responsibility of the child welfare worker to protect the family's right to confidentiality by requesting that the court be closed.	____	____
2. A demand notice is issued 3-5 days after apprehension.	____	____
3. A notice of application for an order after apprehension can be made in 10-14 days.	____	____

Answers

1. True
2. True
3. False. Needs to be made in not less than 2 days.

References

1. Alberta Social Services
Handbook - Child Welfare in Progress
Tab 03
Pages 41 - 46, 102.

2. Alberta Child Welfare Act.

Volume

4

PROGRESS

Alberta
SOCIAL SERVICES

ALBERTA SOCIAL SERVICES

Information Guide To The Child Welfare Act

Unit IV

Children's Guardian and Directors
Temporary Guardianship
Permanent Guardianship

CHILD WELFARE IN PROGRESS
December, 1986

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Joyce Hanley - Training Officer, Training Resources Corporate Staff Development.

Alyson Lavers - Regional Representative, Central Region, Alberta Social Services

Judy Maggs - Regional Representative, Northeast Region.

Ann Moore - Regional Planner, South Region, Alberta Social Services.

Danny Roy - Regional Staff Development Coordinator, Northeast Region.

PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,

Helen Wentz

Helen Wentz
Senior Director
Family and Children's Services
Alberta Social Services

HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute videotapes that may be available to you.

The overall objective of these modules is to give you, the child welfare worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

THE INFORMATION GUIDE SERIES

UNIT I

1. BACKGROUND INFORMATION
2. PHILOSOPHICAL PRINCIPLES
3. MATTERS TO BE CONSIDERED
4. MAJOR INNOVATIONS
5. DEFINITIONS

UNIT II

1. PRELIMINARY INTERVENTIONS
2. CONFIDENTIALITY
3. AGREEMENTS

UNIT III

1. SUPERVISION ORDERS
2. APPREHENSIONS
3. SERVICE FOR COURT AND RIGHTS OF APPEARANCE

UNIT IV

1. CHILDREN'S GUARDIAN AND DIRECTORS
2. TEMPORARY GUARDIANSHIP
3. PERMANENT GUARDIANSHIP

UNIT V

1. CONFINEMENT OF AN APPREHENDED CHILD
2. SECURE TREATMENT CERTIFICATE
3. SECURE TREATMENT ORDER
4. APPEAL PROCESS

UNIT VI

1. JOINT GUARDIANSHIP
2. PRIVATE GUARDIANSHIP
3. ADOPTION

UNIT VII

YOUNG OFFENDERS ACT

1. DEFINITIONS AND PRINCIPLES
2. PRE-COURT PROCEEDINGS
3. ROLE OF THE COURT
4. POST-COURT PROCEEDINGS

UNIT IV
Guardianship

SECTION 1

Children's Guardian and Directors	A description of: the term guardianship, the role of the Children's Guardian, the role of a director, and the relationship between a director and the Children's Guardian.

SECTION 2

Temporary Guardianship	A description of what a temporary guardianship order is, what it does, and the conditions that must be satisfied in order for a temporary guardianship order to be granted.

SECTION 3

Permanent Guardianship	A description of what a permanent guardianship order is and the conditions under which it is granted.

INTRODUCTION

As a child welfare worker you will encounter situations in which the survival, security and development of the child cannot be adequately protected by the guardians. This may include cases of physical or sexual abuse where the abusing parent is likely to continue the abuse, and the other parent is unable or unwilling to protect the child. It might also include some situations of neglect, especially with younger children.

In these instances you may feel that less intrusive measures would still place the child at risk. If there are no other appropriate options open to you, the most feasible action would be for the Department to assume guardianship and remove the child from the family.

In this module we will explore some of the factors that must be thought through when considering guardianship orders, the options open to you in these situations, and the conditions that must be satisfied when seeking an order.

While we have reportedly stressed the principle of least intrusion, this is not to be used as a reason for not acting promptly when a situation calls for stronger measures to ensure the safety of the child. The principle of least intrusion doesn't imply that all less intrusive measures must be exhausted before a more intrusive action can be taken. It means making the least intrusive intervention that is consistent with protection of the child. In some cases least intrusion means the removal of a child promptly from an environment that endangers her physical and mental health. This module addresses these situations.

In this section we will explore the various topics related to guardianship under the Child Welfare Act.

Guardianship refers to the legal responsibility and authority, on behalf of a child to:

- make decisions
- give consent
- monitor
- advocate

Under the Child Welfare Act two authorities share responsibility for the care and protection of a child: a director and the Children's Guardian. We will first examine the respective roles of these two authorities, and then explore two types of guardianship orders: temporary guardianship and permanent guardianship.

SECTION I: CHILDREN'S GUARDIAN AND DIRECTORS

The Role of the Children's Guardian

The Office of the Children's Guardian was created in July 1985 through the proclamation of the Child Welfare Act. The Act requires the Minister to appoint a Children's Guardian, and empowers the Provincial Court to designate the Children's Guardian as the guardian of all children who come under the care of the Department through a permanent guardianship order or agreement. In addition the Children's Guardian is appointed by the Provincial Court as a joint guardian of children for whom temporary guardianship is ordered. This includes the following responsibilities to:

- assume the guardianship role for children under permanent guardianship orders or agreements, and
- share joint guardianship of children under temporary or joint guardianship orders.

A child in Alberta is placed under guardianship through a Court order when the judge finds, from the evidence presented, that the child is in need of protective services, and that the child's physical or emotional well being is at substantial risk if the child remains in the family.

As was stated previously, guardianship involves making decisions, giving consents, monitoring and advocating; hence, the Children's Guardian is legally responsible for all four of these areas.

These responsibilities are operationalized through the following roles of the Children's Guardian:

1. *Decision Making

- ° Makes decisions as to the appropriateness of major medical surgery such as: corrective surgery, and abortions.
- ° Develops plans for an established positive working relationship with all other guardians of a child who is under permanent guardianship.
- ° Decides if a placement for adoption or private guardianship is appropriate.
- * (All decision making by the Children's Guardian is also governed by Section 2, "Matters to be considered").

2. *Consent

- ° Consents to major medical treatment on surgical procedures.
- ° Consents to termination of guardianship.
- ° Consents to: marriage, change of name, initiation or defense of civil action, certain mental health therapy, etc. for a child under a permanent guardianship order.
- ° Consents to autopsies, burials, etc. for children under permanent guardianship orders and agreements.
- ° Consents to an out-of-province placement for a child under a guardianship order or agreement.
- ° Consents to adoption with a view to placement.
- ° Consents to private guardianship orders.
- ° Consents to change of child's religious affiliation.
- * (Without the consent of the Children's Guardian or his designate none of the above actions can take place).

3. Monitoring

- Monitors case plans to ensure that adequate care and treatment plans are prepared for children under guardianship orders and agreements (systematic monitoring).
- Monitors the implementation of case plans to ensure their continued appropriateness (systematic monitoring).
- Responds to complaints or concerns from children, social workers, guardians, caregivers, other professionals, and the public related to children under guardianship.
- Gathers information (through reviews, interviews, surveys and research) with reference to suspected systemic problems.
- Identifies factors that may lead to the need to place children under guardianship.
- Identifies programs, policies, or practices which are deemed to be beneficial to children under guardianship.

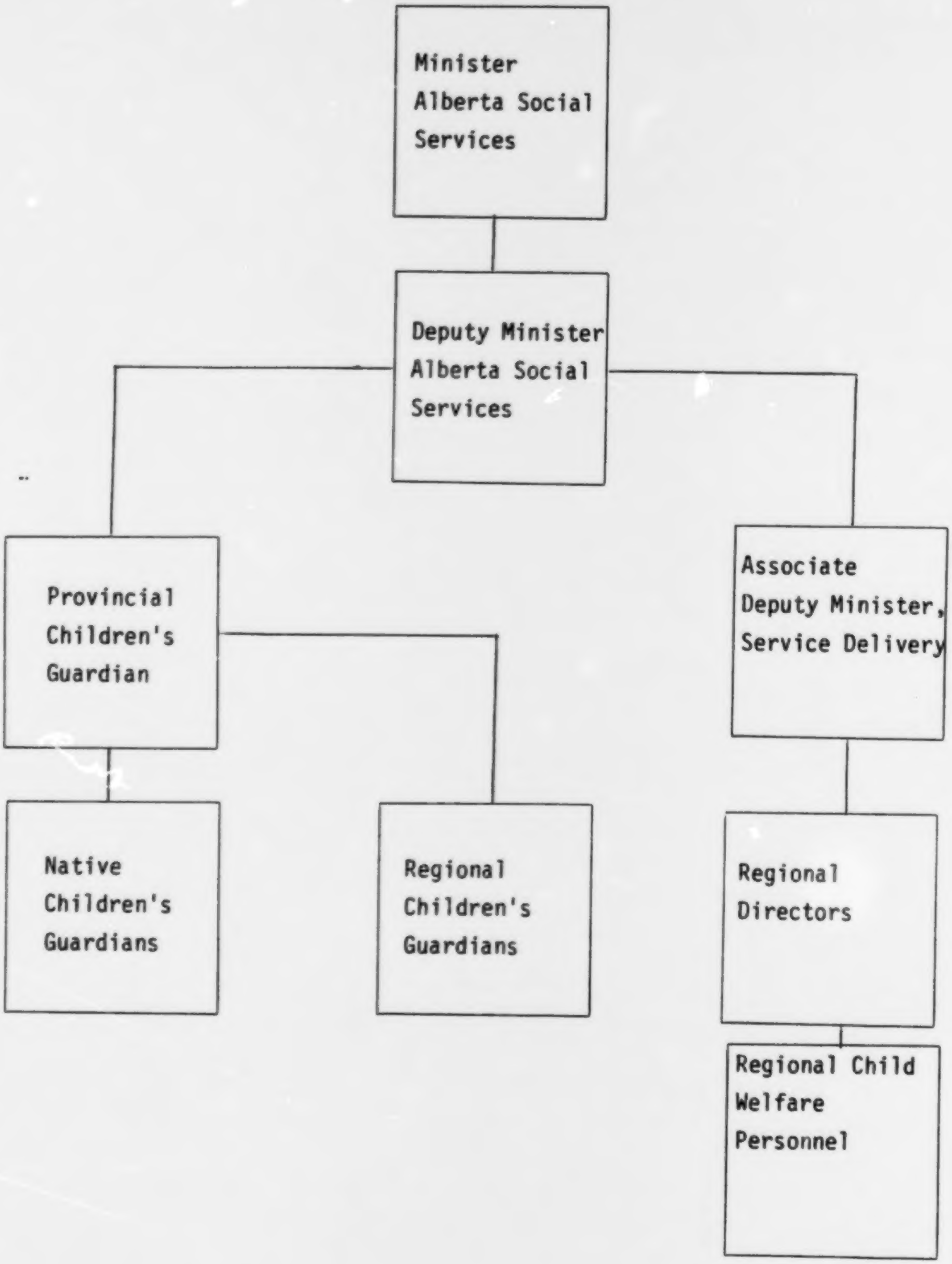
4. Advocacy

- Requests legal representation for children under guardianship and deals with appropriation of costs.
- Advocates within the system to ensure appropriate and adequate steps are taken to identify needs of the child and that case plans are adequate, regularly reviewed, and implemented appropriately.
- Identifies and reports systemic problems and deficiencies with the system relating to the care of children, and proposes remedial action.
- Makes recommendations for preventive efforts with reference to factors that may lead to the need to place children under guardianship.
- Recommends implementation of programs, policies or practices deemed to be beneficial to children.

As is evidenced through these roles, the Children's Guardian is ultimately responsible for ensuring that individual children under his guardianship receive proper care and, when this care is not provided, acts as an advocate on behalf of the children.

The Department has one provincial Children's Guardian and six Regional Children's Guardians, one in each of the six regions of Alberta Social Services. There are also provincially appointed Native Children's Guardians who share guardianship responsibilities with the Regional Children's Guardians. Many of the responsibilities of the provincial Children's Guardian are delegated to the Regional Children's Guardians.

To provide for autonomy and objectivity of the role of Children's Guardians, their reporting relationship has been separated from Departmental Service Delivery. The Provincial Children's Guardian reports directly to the Deputy Minister. The following organizational chart reflects this separation of roles:


Minister
Alberta Social
Services
Deputy Minister
Alberta Social
Services
Provincial
Children's
Guardian
Associate
Deputy Minister,
Service Delivery
Native
Children's
Guardians
Regional
Children's
Guardians
Regional
Directors
Regional Child
Welfare
Personnel

The Role of a Director

While the Children's Guardian is responsible for functions such as decision-making, consenting, monitoring and advocacy of children under guardianship of the Department, a director is responsible for providing for the day-to-day care of these children and, in addition, for providing protective services for all other children who come under the legislation. Some of the major responsibilities of a director include:

- planning, organizing and delivering services for children in care.
- supervising personnel delivering child welfare services.
- receiving and investigating reports of children in need of protective services and, where necessary, reporting findings to the court.
- entering into support and custody agreements.
- entering into permanent guardianship agreements.
- applying for court orders (i.e. supervision, apprehension, temporary guardianship and permanent guardianship)
- investigating adoption applications and submitting court reports.
- providing for the care and maintenance of apprehended children.

The separation of authority between a director and the Children's Guardian has a number of advantages, both for the child and the child welfare worker. These include:

- removal of conflicts that might occur when one person is responsible for both the administration of child welfare responsibilities and advocacy for change within the system.
- review of decisions by a party specifically designated to act on behalf of the child's best interests.
- provision of checks and balances to ensure quality of service for children.
- creation of a support system to front line workers and other concerned individuals, when systemic changes are required.

Relationship Between a Director and the Children's Guardian

Many of the authorities of the Native/Regional Children's Guardian are in turn sub-delegated to a director. These include authorities such as:

- receiving notice of an application to terminate a permanent guardianship agreement.
- applying to court for an order prescribing conditions for consultation with a guardian of the child, maintenance payments, or access by other guardians, if these issues cannot be resolved by an agreement.
- determining where a child will live, including permission for out-of-province travel.
- involvement with the child's family or significant others.
- referral to counselling (and mental health) resources.
- consent to ordinary medical/dental treatment.
- consent to emergency medical treatment or surgical procedures.
- day-to-day decisions, regarding a child's dress, diet, discipline and other similar matters.

These authorities allow a director to assume custody of a child and provide the day-to-day services that a child requires.

Some authorities, however, are retained by the Native/Regional Children's Guardian. These include:

- consent for major medical treatment and surgical procedures.
- consent to private guardianship.
- consent for change of name of the child, or of marriage.
- consent to permit autopsies and burials.
- consent to adoption.
- consent to change of religious affiliation.
- consent to initiation or defense of civil action.
- consent to participation in research programs.
- consent to certain mental health therapies.
- consent to elective medical and dental treatment.
- consent to out-of-province placements.

These represent major decisions that require the formal involvement of the Native/Regional Children's Guardian to ensure that the decision made best reflects the needs of the child. Many of the authorities that are designated to a director under the act or are sub-delegated from the Native/Regional Children's Guardian are in turn sub-delegated to child welfare personnel in each region, including the child welfare worker.

These authorities include:

- the authority to receive a report of a child in need of protection.
- the authority to investigate a report of neglect or abuse.
- the authority to seek court orders or reviews.
- the authority to consent to ordinary medical/dental treatment and emergency medical/dental treatment.

As a child welfare worker, you also have the power to sub-delegate some of these authorities to care givers such as foster parents, group home supervisors and institutional directors.

Some authorities are, however, retained by a director and regional managers. These are:

Section 8 (2) - enters custody agreement with a child 16 years of age or over and takes custody of the child.

Section 10(1) - enters a permanent guardianship agreement with the guardian(s) of a child.

Section 4(1) - may issue a secure treatment certificate if a child is the subject of a temporary or permanent guardianship order.

Section 56.2(1) - shall acknowledge receipt of an adoption petition.

Section 56.3 - indicates in writing to the Court that the petitioner is fit and proper to adopt.

Section 11(2) - receives notice of an application to terminate a permanent guardianship agreement.

Section 21(1)(a) - receives notices of hearings under this section when the Children's Guardian is the guardian of the child.

Section 42(2) - receives notice of a hearing in respect of an application for a secure treatment order.

Section 47(5)(b) - receives notice of a hearing on a review of a secure treatment order.

As you can gather from the description of authorities, the relationship between the Children's Guardian and a director is a complex one. This complexity is, in turn, reflected in the role that the child welfare worker plays as a representative of both parties.

The success of this relationship is dependent upon two things: first, your understanding of the authorities delegated to you by both parties (through the letter of delegation that you will be issued upon commencement of your position) and, secondly, the degree of effective communication between a director and the Office of the Children's Guardian. Since you are an integral source of information in the decision-making process with respect to children under your care, your communication with line personnel and your documentation will be key factors in establishing effective communication between the two areas.

In Summary

A DIRECTOR	CHILDREN'S GUARDIAN
delivers programs establishes policies provides resources fills in service gaps	monitors programs advocates for children makes major decisions gives consents.

BY SEPARATING THE ROLES IT	AS IN THE FOLLOWING EXAMPLE
1. assures the child has an advocate	a case where the director may be in conflict over what's best for a group and what the individual child needs.
2. avoids conflict of interest	appointing a lawyer to represent the child's interests in a court case when those interests may potentially vary with those of the natural parents and a director.
3. allows Children's Guardian to push for most appropriate services	advocating for services not normally provided by the Department but needed by a specific child or group of children.
4. monitors decision-making	monitoring the quality and appropriateness of case plans.
5. provides advocacy for system as a whole	the Children's Guardian feels a policy is required to ensure children are adequately cared for.

Exercise

1. What are two powers that are delegated to a child welfare worker from a director?

2. What are two powers delegated to a child welfare worker by the Children's Guardian?

3. Who supervises the Children's Guardian? What function does this separation in lines of supervision serve?

Answers

1. Due to the large number of authorities, please consult Tab 04 of the CWIP Handbook.

2. Due to the large number of these authorities, please consult Tab 04 of the CWIP Handbook.

3. The Deputy Minister supervises the Children's Guardian. This separation of levels of accountability from Service Delivery help avoid conflicts of interests and, thus, allow the Children's Guardian to play an objective monitoring and advocacy role.

References

1. Alberta Social Services
   Handbook - Child Welfare In Progress
   Tab 04.

2. Alberta Social Services
   Native Child Welfare Services Practice Guidelines
   Pages 16-17.

3. Alberta Social Services
   "An Orientation to the Alberta Children's Guardian"
   Office of the Children's Guardian.

4. Alberta Social Services
   "Office of the Children's Guardian Policy, Procedure, and Criteria for Decisions Manual"
   Office of the Children's Guardian.

5. Alberta Social Services
   "The Advocacy Role of the Children's Guardian" by Margot Herbert
   Office of the Children's Guardian.

6. Alberta Social Services
   "The Children's Guardian Monitoring Manual"
   Office of the Children's Guardian.

7. Alberta Social Services
   "You and the Children's Guardian: Information for Foster Parents, Group Home Workers and Other Care Givers"
   Office of the Children's Guardian.

8. Alberta Social Services
   "You and the Children's Guardian: Information for Children and Youth"
   Office of the Children's Guardian.

SECTION II: TEMPORARY GUARDIANSHIP

One of the most difficult decisions a child welfare worker must make has to do with intrusion into the family. On the one hand, you must deal with the immediate crisis; on the other hand you must do so in a way that addresses the long-range needs of the child. The long range goal should be to maintain the child in, as near as possible, a natural family situation. This should also be facilitated with the least amount of disruption to the life of the child (and the family).

As we have seen in other sections of this manual, there are times when the child cannot be maintained by the family. These are situations in which the child's safety, security and development would be at substantial risk because the guardians are unable or unwilling to provide the type of care and protection that the child needs.

Upon investigation of a report of abuse or neglect, you as a child welfare worker might assess a child to be in need of protective services (Section 1 of the Child Welfare Act). If, as a result of your assessment you decide the following...

a. that abuse/neglect is evident, through your observations or through medical/psychological examination,

b. that if the abuse/neglect continues, the child's safety, security and emotional development would be at risk,

c. that abuse/neglect is part of a consistent and pervasive pattern of the family and has continued over a extended period,

d. that even with Departmental supervision or support, the guardians are unable or unwilling to control the conditions leading to the neglect or abuse, or

e. that there is some likelihood of the pattern of neglect/abuse being remedied if the child is removed from the family for a period of time, then a temporary guardianship order would be appropriate.

Case Example

A mother has been reported to the Department by a hospital because her two-year old daughter has been admitted with a fracture of the upper arm, and a number of bruises to the arm, head and back. Upon investigation the medical staff confirm the child welfare worker's opinion that these injuries and bruises do not usually come from the normal play of a child. Reports from neighbors indicate that the child has been badly bruised a number of times in the past. They also report that the mother drinks heavily and often becomes violent and aggressive during these periods. The child's bruises and injuries seem to follow these episodes. When the mother is questioned about the bruises she reports that the child fell down the steps leading to the apartment. She also angrily states that she does not drink heavily and is not abusive towards her child.

In this case you, as a child welfare worker, might decide to apprehend the child and seek a temporary guardianship order. In order to satisfy the court you would have to prove that:

a. the child is in need of protective services, and

b. the survival, security or development of the child may not be adequately protected if the child remains with her guardian.

but it can be anticipated that within a reasonable time:

c. the child may be returned to the custody of her guardian, or

d. if the child is 16 years of age or over, the child will be able to live independently.

(C.W.A. Section 29 (1))

This order would allow the Department to care for the child while the problems leading to the order are being resolved. Temporary guardianship orders are also time-limited.

Term of Temporary Guardianship

31(1) The total cumulative period during which a child is in the custody of one or more directors or the subject of a temporary guardianship order shall not be more than two years.

(1.1) A period during which a director has custody of a child pursuant to section 20(1) shall not be included in computing the total cumulative period in subsection (1).

(2) Notwithstanding subsection (1), the Court may make a temporary guardianship order with respect to a child for a further cumulative period of not more than two years if the child has not been in the custody of one or more directors or the subject of a temporary guardianship order during the five years immediately preceding the date of the application.

(3) Notwithstanding subsection (1), if the Court is satisfied that there are good and sufficient reasons for doing so, it may make an order of temporary guardianship for one further period of not more than one year.

(C.W.A. Section 31)

The legislation addresses the fact that the longer the child is separated from the family, the less likelihood of her reintegration. Through limiting the cumulative period a child can be the subject of a temporary guardianship order, the Act requires that a concerted effort be made by all parties to resolve the problems leading to temporary guardianship, in order to reunite the child with her family. If the problem cannot be resolved within this time period, then the Department must consider the options available for the long-range care of the child.

This is consistent with Section 2 of the Act ("Matters to be Considered"). Section 2(b) states "the interests of the child should be recognized and protected", while section 2(m) declares that "there should be no unreasonable delay in making or implementing a decision affecting a child."

The Act also requires under Section 29(3) that a caseplan be filed with the court within thirty days of the order, and under Section 29(4) that matters of access, consultation and maintenance be worked out with the guardians.

(C.W.A. Section 29(3) & (4)(a))

Under Section 30 of the Act a request for review of the order can be made by a director at any time, or once during the term of the order by a guardian or the child (if the child is twelve years of age or older).

(C.W.A. Section 30(1)(a)(b))

Exercise

Please indicate whether or not each of the following statements is true or false.

	True	False
1. Temporary guardianship orders may be extended past the eighteenth birthday of the child.	____	____
2. The Court may make an order appointing the Children's Guardian as a temporary guardian of the child for a period of not more than one year.	____	____
3. Temporary guardianship orders may be renewed for a total cumulative period of two years.	____	____
4. Under a temporary guardianship order, guardians other than the Children's Guardian must apply for an access order if they wish to visit the child on a regular basis.	____	____
5. Conditions of consultation on matters affecting the child must be negotiated between the child welfare worker and the guardian of the child when the child is under a temporary guardianship order.	____	____

Answers

1. False

2. True

3. True

4. False. The purpose of temporary guardianship is to resolve the problems leading to protection and reunite the child with the family. Contact with the guardians should be encouraged.

5. True. Since the guardianship is shared, consultation issues must be negotiated.

References

1. Alberta Social Services
Handbook - Child Welfare In Progress
Tab 03
Pages 30-62.

2. Alberta Social Services
Program Manual - Child Welfare In Progress
Pages PM33-35.

3. Alberta Social Services
Native Child Welfare Practice Guidelines
Page 10-12.

SECTION III: PERMANENT GUARDIANSHIP

Permanent guardianship is one of the most extreme interventions possible under the Child Welfare Act. It is only used when a child is in need of protection and it is anticipated that her survival, security and development could not be adequately protected if she is returned to her guardians within a two-year time period (or, in the case of a child that will be over sixteen years-of-age within the two year period, the child would not be able to live independently). The purpose of the application is to address the long-range needs of the child by placing the child in an environment where she will receive better care.

If the Court makes a permanent guardianship order, the Children's Guardian is the sole guardian of the child and the Public Trustee is the sole trustee of the estate of the child.

(C.W.A. Section 32(3))

If the Court makes a permanent guardianship order, it may on the application order require that financial contributions be made to the maintenance of the child by:

1. a person other than the Children's Guardian who is legally responsible for the maintenance of the child OR

2. a trustee from property or an estate held in trust for the child.

(C.W.A. Section 32(5))

A director, or the persons ordered to make financial contributions, may apply to the Court for a review of the order.

A former guardian of the child, or any person with whom the child has a significant relationship, may apply for an order prescribing the allowed access to the child during the period of guardianship. The Court will not make this order unless it is satisfied that this access to the child will not interfere with the adoption of the child, and it is in the best interests of the child.

(C.W.A. Section 6 and 7)

If an order of access is made, the child (if 12 years or over) or the person to whom access is provided in the order, may apply to the Court for a review of the order. On hearing this application for review, the Court may continue, vary or terminate the original order.

If a child is the subject of a permanent guardianship agreement or order, the Children's Guardian, if he is satisfied that the child should be returned to the guardianship of the person who was the guardian of the child before the agreement, may apply for an order terminating the permanent guardianship agreement.

(C.W.A. Section 33(1))

Under permanent guardianship the Minister may continue to provide care and maintenance for someone attaining 18 years of age so the child can complete a course of studies or other training. The Regulations of the Child Welfare Act allow for care and maintenance to be provided for up to two years past the eighteenth birthday of the child.

(C.W.A. Section 33(2))

A temporary guardianship order remains in effect until:

- the order expires (6 months) or is terminated by the Court,
- the child attains the age of 18 years, OR
- the child marries.

(C.W.A. Section 38(1))

A permanent guardianship agreement remains in effect until:

- the agreement or order is terminated by the Court,
- the child attains the age of 18 years, OR
- the child marries.

(C.W.A. Section 38(2))

Permanent Guardianship - Summary

CONDITIONS

1. If it cannot be reasonably anticipated that the child could return home within the two year period, a permanent guardianship order would be appropriate through Family Court.

2. In addition to these procedures a judge can also give an access order for any child under temporary guardianship or permanent guardianship if the director and (former) guardian(s) fail to reach an agreement.

3. Maintenance payments can also be ordered under section 32(5).

References

1. Alberta Social Services
Handbook - Child Welfare In Progress
Tab 03
Pages 30-62

2. Alberta Social Services
Program Manual - Child Welfare In Progress
Pages PM37-40

3. Alberta Social Services
Native Child Welfare Services Practice Guidelines
Page 10-12

4. Alberta Child Welfare Act

Exercise

Following is a case study related to the content of this module. Please read it carefully and answer the three questions that follow.

Once you have completed the case study, compare your answers with those on the answer sheets.

Case Example

RE:	JONES, Sarah
AGE:	Approximately 1½ years
FATHER:	Unknown
MOTHER:	JONES, Sally
RESIDENCE:	#2, 12345 - 91 Street Edmonton, Alberta

Call is received at Intake from baby-sitter who wants Child Welfare to come pick up a child. Sarah was left with sitter two days ago by mom who was going shopping. She was to return in three hours. Visit to the baby-sitter's home; sitter is 17-years-old with young baby of her own. She has little food (is in receipt of Income Security), and only has a crib for her child.

She met Sarah's mother, who lives in the same apartment block, a few weeks ago. Claims Sarah's mom is on "welfare" and always has a lot of male visitors and wild, noisy parties.

Sarah is in wet diapers and a dirty T-shirt - arrived with no shoes or socks. Examine Sarah, whose hair is matted and filled with lice. She has open sores on her buttocks and what appears to be a cigarette burn on her abdomen. Her right arm is very bruised. She is timid and quiet.

Sitter has no idea where mom could be, but says she is totally unprepared to continue to care for Sarah. (It is now 2:00 P.M. on Thursday afternoon).

Answer Sheet

1. Is apprehension and application for a guardianship order appropriate? Please justify your answer:

2. Under what part of the legislation would you act?

3. What are the major components of your case plan?

Case Example Answer Sheet

1. Apprehension of the child would be appropriate. It is evident that the mother has shown very little responsibility in this situation; however, a further investigation would need to be made to determine:

   a. the extent and causes of the neglect and abuse
   b. the resources available to the family
   c. the mother's willingness to care for the child under the supervision of the Department.

   If as a result of this investigation, you assessed the mother as being unable to or unwilling to care for the child under the supervision of a director then a temporary guardianship order would be appropriate. The length of the order would depend upon your assessment of the mother's willingness and ability to care for Sarah. If the mother seems to have some potential for change a brief period of guardianship may be all that is required.

2. The definition of the child's injuries and the circumstances which make Sarah a child in need of protection should reflect Section 1 of the Act. Section 2 should be considered when weighing the risk to the child and selecting the appropriate intervention.

3. Major components of the case plan should include the following:

   a. assessment and evaluation of mother's parenting skills
   b. full assessment of the child, medically and developmentally
   c. observation of the bonding between mother and child, through regular visits
   d. investigation of mother's social history to determine the possibility of care givers within the extended family
   e. clear expectations for mother around the care and supervision of her child, established through attendance at a parenting course, assignment of a parent aid, etc.

APPENDIX
Analysis of Case Example From Video #4
"Temporary And Permanent Guardianship"

On the following two pages is the analysis of the case example presented at the end of the video entitled "Temporary And Permanent Guardianship Orders". This analysis represents an attempt to review the factors affecting your decision and suggests possible courses of action.

Because no two situations are exactly the same, black and white solutions to these cases are not possible. We also want to emphasize that in "real life" situations it is important to conference these cases with your supervisor and other professionals prior to taking any action (other than emergency action).

CASE EXAMPLE

ASSESSMENT

On the basis of the information presented, this is an infant for whom you have grave concerns; your primary concern on receipt of the call must be this infant's protection. Mother's behavior eliminates her as a caretaker for at least the short term. Since the major issue is this baby's safety, and mother has failed to show appropriate responsibility for ensuring the care of her child, a guardianship order is reasonable.

Apprehension (given your information) is a necessary step; mother, at the point the duty worker is called, cannot be found. It is the responsibility of the duty worker, in consultation with the supervisor, to decide whether the situation warrants immediate intervention through a emergency apprehension, or an application to a judge for an apprehension order. As in the previous case example, application for a temporary guardianship order must be given consideration, but remember, all of your decisions must be based on the information you are able to gather in your assessment.

This case is a more serious one than the previous case examples. Younger children are much more vulnerable in the hands of abusive or neglectful parents. The ability of a young mother in trouble with the law to change her life style for the better, must be weighed against the child's need for stability, bonding to the birth parent versus another psychological parent, and the child's sense of time. A permanent guardianship order may be the most appropriate order for which to apply, once you have weighed these factors.

Investigations Outcomes

A case plan in this situation needs to be established based on the child's need for care. This young mother appears to be unstable and unreliable. Your history check on CWIS reveals past concerns with the baby's care. There is a suggestion of serious medical concerns including possible sexual abuse.

As with the previous example your plan should focus on:

- medical assessment and documentation of injuries and suspected maltreatment.
- provision of appropriate treatment.
- complete assessment of child's developmental stages.
- placement of the child in an appropriate foster home.
- assessment of mother's long range ability to care for the child.
- identification of permanency planning issues.

Volume

5

PROGRESS

Alberta
SOCIAL SERVICES

ALBERTA SOCIAL SERVICES

Information Guide To The Child Welfare Act

Unit V

Confinement of an Apprehended Child
Secure Treatment Certificate
Secure Treatment Order
Appeal Process

CHILD WELFARE IN PROGRESS
December, 1986

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Danny Roy - Regional Staff Development Coordinator, Northeast Region.

PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,

Helen L Wentz

Helen Wentz
Senior Director
Family and Children's Services
Alberta Social Services

HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute videotapes that may be available to you.

The overall objective of these modules is to give you, the Child Welfare Worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

THE INFORMATION GUIDE SERIES

UNIT I

1 BACKGROUND INFORMATION

2 PHILOSOPHICAL PRINCIPLES

3 MATTERS TO BE CONSIDERED

4 MAJOR INNOVATIONS

5 DEFINITIONS

UNIT II

1 PRELIMINARY INTERVENTIONS

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UNIT III

1 SUPERVISION ORDERS

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1 CHILDREN'S GUARDIAN AND DIRECTORS

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UNIT V

1 CONFINEMENT OF AN APPREHENDED CHILD

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UNIT VII

YOUNG OFFENDERS ACT

1 DEFINITIONS AND PRINCIPLES

2 PRE-COURT PROCEEDINGS

3 ROLE OF THE COURT

4 POST-COURT PROCEEDINGS

UNIT V

SECTION 1

Confinement of an Apprehended Child	An explanation and example of confinement

SECTION 2

Secure Treatment Certificate	An explanation of terms and conditions of secure treatment certificates

SECTION 3

Secure Treatment Order	An explanation of the terms and conditions of a secure treatment order and how it differs from a secure treatment certificate

SECTION 4

Appeal Process	A description of the appeal panel and administrative reviews

INTRODUCTION

Secure treatment is one of the most intrusive and extreme interventions that can be made under the Child Welfare Act. It represents a treatment service to remedy problems of children who are emotionally or behaviorally disturbed and present an immediate danger to themselves or others. Any consideration of the need for secure treatment should take into account:

- the least restrictive alternative appropriate for meeting the child's needs. Less restrictive placements should, wherever possible, precede restrictive placements.

  GIVEN CURRENT CONDITIONS,
  IS THE PLANNED TREATMENT THE LEAST RESTRICTIVE? ☐

- the magnitude of risk to the child should outweigh the potential harm resulting from the imposition of secure treatment.

  IS THE CHILD AND COMMUNITY BETTER OFF WITH SECURE TREATMENT? ☐

- the past history of harmful behavior, the degree of this behavior, and the immediate likelihood of the continuation of the behavior.

  WILL THE BEHAVIOR GET WORSE IF LEFT IN THE COMMUNITY? ☐

- the ability of the secure treatment setting to alleviate the problems that caused the need for secure treatment services.

  WILL THE PROBLEM IMPROVE IN A SECURE TREATMENT SETTING? ☐

In order to ensure that this intervention is in the best interest of the child and that the child's legal rights are observed, very clear and strict procedures are incorporated into the legislation. These procedures focus on four areas:

- the conditions under which confinement can take place;

- the accountability of the Department before the courts;
- short timelines for decision making;
- a mechanism for review of decisions.

In this section we will examine how these four areas impact your role during the process. We will also describe the types of legal interventions that can be made under the legislation.

SECTION I: CONFINEMENT OF AN APPREHENDED CHILD

Occasionally, it may be necessary to place an apprehended child in confinement. The legislation makes no references to the criteria that must be met in order to confine an apprehended child. Departmental policy, however, states that, in the opinion of the child welfare worker and supervisor, the child must be in a condition presenting a danger to himself or others.

If you apprehend a child for the purpose of confinement you must also bear in mind that a director has the same responsibility for the child's care, maintenance and well being, as for any other child under apprehension.

Section 20(7) allows you, as a child welfare worker, to act when necessary to confine a child; however, it also builds in accountability for these actions. If a child is confined, you are required to appear before the court on behalf of a director within one day of the confinement:

- to show why the confinement is necessary, and
- if necessary, to apply for an order authorizing the confinement of a child for a further period of no more than eight days.

(C.W.A. Section 20 (7))

The following is an example of the form you must complete for the show cause hearing:

Person I.D. [redacted]

Court Docket No.

Court File No.

IN THE PROVINCIAL COURT OF ALBERTA

IN THE MATTER OF Tracy Stevens,

BORN February 2nd, 1970,

A CHILD WITHIN THE MEANING
OF THE CHILD WELFARE ACT

APPLICATION TO SHOW CAUSE FOR CONFINEMENT

I, John Smith (name), authorized by a director apply:

1. To show cause that the above named child who was apprehended on 16th day of July, 19 86, was confined on 16th day of July, 19 86;
2. And I further make application for an order authorizing the further confinement of the child for a period of not more than 8 days.

In support of this application, I solemnly declare that:

1. The child was confined for the following reasons: Behaviorally out of control. AWOL's promiscuity, substance abuse. Threatened suicide within the past twenty four hours and has attempted such in the past.
2. The child requires further confinement for the following reasons: Requires medical and psychological assessment. Becuase of past AWOL's and seriousness of emotional/behavioral problems she requires constant supervision.

AND I make this solemn declaration conscientiously and believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me)
at Southwest District Office)
105 Street & 80 Avenue,)
this 16th day)
of July, 19 86)

(Applicant)

(District Office)

(Judge or Justice of the Peace, Notary Public or Commissioner for Oaths)

To: Clerk of the Court

SSCH 1604 (Rev. 86 05

Under Section 42(1.1) a child welfare worker, on behalf of a director, may also apply for a secure treatment order to extend the confinement of an apprehended child for up to thirty additional days. This thirty day period would then provide an opportunity for further assessment, or for court hearings on issues such as guardianship.

SECTION II: SECURE TREATMENT CERTIFICATE

A secure treatment certificate allows for confinement of a child under the guardianship of the Department for up to five days. The secure treatment certificate gives the Department the flexibility to protect children out of control, and to maintain legal accountability for actions taken. This permits time for assessment, diagnosis and recommendations to the Court.

Under Section 41(1) of the Child Welfare Act a child can be confined under a secure treatment certificate or order only if all three of the following conditions are met:

a. the child is suffering from a mental or behavioral disorder;

b. the child is in a condition presenting a danger to himself or others; and

c. it is necessary to confine the child in order to remedy or alleviate the disorder.

(C.W.A. Section 41(1))

The Child Welfare In Progress Handbook provides more specific details on these three conditions, reflecting the current Departmental policies on secure treatment.

A situation in which secure treatment might apply is contained in the following example:

Craig is a sixteen year old boy who is under a permanent guardianship order and in a residential treatment program due to his aggressive behavior. His original admission to care was a result of severe physical abuse. The child welfare worker had indicated in her assessment that Craig's emotional problems have developed as a result of his maltreatment; he has deep rooted feelings of anger towards adults and himself.

From the age of fourteen Craig has evidenced violent behavior. He once struck one of his physical education teachers with a baseball bat. Similar violent incidents have occurred in the residential treatment setting; however, staff were able subdue Craig before he had the opportunity to hurt anyone. Recently, his aggression has escalated.

One evening Craig threatened another boy in the unit with a knife. The unit staff felt that Craig would have used the knife, and intervened at that point.

When interviewed that evening by his social worker, Craig threatened to finish what he had started. The social worker asked the staff to supervise Craig closely until consultation could take place with the center's psychologist. The psychologist felt that Craig was making progress in treatment, and was therefore more vulnerable to impulsive behaviour and should be confined while he resolved some of the internal conflicts he was experiencing.

Craig's social worker then contacted the Regional Manager of Children's Services and received permission to place Craig in the confinement unit under a secure treatment certificate.

In this example, Craig was suffering from both a mental and behavioural disorder, was an immediate danger to other children, and confinement was necessary to remedy the disorder. In other situations the child might suffer from a behavioral or mental disorder, present a danger to himself or others, but confinement might only increase the seriousness of the disturbance. Then a more appropriate option might be to avoid confining the child but to supervise him very closely, (e.g. one-to-one supervision). The decision must be based on the needs of the child in question.

Once a child welfare worker believes a secure treatment certificate is necessary, the certificate is obtained through the regional manager responsible for child welfare matters. The following page is an example of a secure treatment certificate.

Alberta

**SOCIAL SERVICES
AND COMMUNITY HEALTH**

SECURE TREATMENT CERTIFICATE/ AUTHORIZATION FOR CONFINEMENT

CHILD WELFARE

Person I.D. 00045678

IN RESPECT of
Name of child

Craig Jones

	y	m	d
Date of Birth	71	03	17

☐ **PURSUANT** to section 20 of the Child Welfare Act, a director has reasonable and probable grounds to believe that the child is in a condition presenting a danger to himself or others, or

☒ **PURSUANT** to section 41 of the Child Welfare Act, a director has reasonable and probable grounds to believe that the child:
a. is suffering from a mental or behavioral disorder; and
b. is in a condition presenting a danger to himself or others; and
c. it is necessary to confine the child in order to remedy or alleviate the disorder.

AND IS THEREFORE authorizing the confinement of the child in

Yellowhead Youth Centre
13120 - 34 Street

		y	m	d		y	m	d
a Secure Treatment Institution	From	86	06	16	To	86	06	20

The reasons for the confinement of the child are as follows: (Summary of presenting problems)

Craig has a past history of AWOL's and assaultive behavior dating back to the age of eleven. He has threatened a boy on the unit with a knife and states that he will follow through with the threat when staff aren't around. Craig's aggressive behavior has increased over the past two months and a secure treatment setting is needed if further counselling with Craig is to continue.

TAKE NOTICE that a director or delegate will appear in the Provincial Court at

	y	m	d			AM/PM
on	86	06	20	at	2:00	☐ ☒

or so soon thereafter as it may be heard to show cause why this certificate/authorization was issued.

This child is entitled to be represented by a lawyer at any appearance before the Court. The address and telephone number of the nearest office of the Legal Aid Society is:

Melton Building, 103 Street & Jasper Avenue #427-7575

	y	m	d
Dated	86	06	16

The Director or authorized delegate

THIS CERTIFICATE/AUTHORIZATION IS THE AUTHORITY FOR ANY PERSON TO CONFINE THE CHILD WHO IS THE SUBJECT OF THIS CERTIFICATE/AUTHORIZATION IN A SECURE TREATMENT INSTITUTION FOR THE PERIOD STATED.

SSCH 1620 (85/03)

DISTRICT OFFICE

When a secure treatment certificate is issued, the child welfare worker is required to appear in court within five working days to show cause as to why the certificate was necessary. Also, a psychological assessment of the child is required within the first seventy-two hours of confinement.

(C.W.A. Section 41 (5))

SECTION III: SECURE TREATMENT ORDER

A secure treatment order is an order given by the Court to confine a child for a specific period of up to a maximum of thirty days. (The order can be renewed for up to sixty days on the first renewal and ninety days on the second renewal.) This provides an opportunity for long-term treatment.

If a child is the subject of a temporary or permanent guardianship order, a director may apply to the Court for a secure treatment order.

A director shall serve a guardian of the child and the child (if 12 years of age or over) with notice of the time and place of the hearing of an application not less than two days before the date of the hearing.

The conditions for a secure treatment order are the same as those for a certificate giving all of the following:

1. The child is suffering from a mental or behavioral disorder.
2. The child is presenting danger to himself or others.
3. It is necessary to confine the child in order to remedy or alleviate the disorder.

(C.W.A. Section 42 (1) (2) & (3))

A secure treatment order is sufficient authority for any person to confine the child in a secure treatment institution for the period stated in the order or the period of the guardianship order, whichever is shorter.

A director shall specify the secure treatment institution in which a child shall be confined pursuant to a secure treatment order.

(C.W.A. Section 42 (4) & (5))

In making a secure treatment order, the Court shall:

1. inform the child of the reason for doing so

2. provide the child, his guardian and his lawyer with a copy of the order and a written statement showing:

   a. the reason for confinement;
   b. the period of the confinement and the date on which it terminates;
   c. that the order may be reviewed or appealed on the application of the child, or his guardian or a director;
   d. that the child may obtain a copy of the form prescribed for making an application for a review from the person in charge of the secure treatment institution;
   e. that the child may be represented by a lawyer at any application to the Court;
   f. address and telephone number of the nearest office of Legal Aid Society.

(C.W.A. Section 42 (b))

Reviews

A request for a review of a confinement order can be made by a child for whom a secure treatment order has been made, a guardian of the child, or a director.

An application for a review may be made:

1. once during the period of the order,

2. once during the period of renewal of the order.

The hearing of a review shall be held not more than ten days after the application is filed with the Court or within any further period the Court directs.

(C.W.A. Section 42 (7))

Notification of a Review

The clerk of the Court shall notify a director of the application.

After hearing an application for the review of a secure treatment order, the Court may make an order in accordance with the conditions of a secure treatment order confirming, varying or terminating the secure treatment order.

The director shall send a notice of the date, time and place of the of the review hearing by the Court by registered mail or by any other method approved by the Court to:

a. the child

b. a guardian of the child

c. a person in charge of the secure treatment institution in which the child is confined.

not less than 5 days before th date fixed for the hearing.

(C.W.A. Section 47 (4) & (5))

Leave of Absence

During the term of a secure treatment certificate or order a director may grant the child a leave of absence from the secure treatment institution for medical, humanitarian or rehabilitative reasons on any terms and conditions that the director considers necessary.

If a child who is the subject of a secure treatment certificate or order:

a. leaves a secure treatment institution when a leave of absence has not been granted, or

b. leaves a secure treatment institution pursuant to leave of absence but fails to return,

a director may order any child welfare worker or peace officer to return the child to a secure treatment institution.

Upon receipt of an order from a director eve y child welfare worker or peace officer is empowered to apprehend, without an order of a court or a warrant, the child named in the director's order, to convey the child to the nearest secure treatment institution and to detain the child while he is being conveyed to the secure treatment institution.

(C.W.A. Section 45(1),(2) & (3)

Exercise

1. What are the three criteria that must be met in order to obtain a secure treatment certificate or order?

   a. ____________________
   b. ____________________
   c. ____________________

2. Once a secure treatment certificate is issued, a director is required to arrange a show cause hearing within _____ working days.

3. A secure treatment order may be granted for for up to a _____ day period for a child confined under apprehension. .

4. If an apprehended child is confined under Section 20(7) of the Child Welfare Act a show cause hearing must take place within:

   a. two days
   b. five days
   c. seventy-two hours
   d. eight days
   e. one day

..... continued next page

5. Please indicate whether each of the following statements are true or false:

	True	False
a. The criteria for confining an apprehended child under Section 20(7) is the same as the criteria for secure treatment certificates.	____	____
b. The confinement of an apprehended child can be extended through a judge's order at the show cause hearing for an additional eight days.	____	____
c. The first renewal of a secure treatment order can only be for a period of up to sixty days.	____	____
d. A secure treatment certificate can only be issued for children under the guardianship of the Department.	____	____
e. A secure treatment certificate requires a judge's approval before it can be implemented.	____	____

Answers

1. a. The child is suffering from a mental or behavioral disorder,

   b. the child is in a condition presenting danger to himself or others, and

   c. It is necessary to confine the child in order to remedy or alleviate the disorder.

2. 5

3. 30

4. e

5. a. False (there are no criteria)
   b. True
   c. True
   d. True
   e. False (it requires approval from the regional manager responsible for child welfare)

SECTION IV: APPEAL PROCESS

The Child Welfare Appeal Panel, under Section 84 of the Act, has the authority to review specific Departmental decisions when a child, or person who has been caring for the child, feels that the decisions are inappropriate.

By allowing certain decisions to be reviewed by a panel comprised of people not directly involved in the decision, the legislation ensures that the rights of individuals who are receiving services from the Department are protected.

Membership

The Appeal Panel is comprised of seven members who are not directly employed by the Department. All members are appointed by the Minister and come from a number of geographically diverse regions within the province. Their term of appointment can be up to a three year period.

From the seven members on the panel, one is appointed chairperson, a second vice chairperson and a third secretary. A quorum consists of three, thus allowing for the panel to meet in two separate sections. For example, one section chaired by the chairperson could meet in Medicine Hat while the second section chaired by the vice chairperson could hold a hearing on the same day in Grande Prairie.

(C.W.A. Section 84)

APPEALS MAY BE MADE REGARDING A DIRECTOR'S DECISION ON:	EXAMPLE
1 Removal from a foster home, adoptive home or any other placement of a child who is the subject of a temporary or permanent guardianship order or agreement.	A child is removed from a foster home and placed in another foster placement closer to his/her home. This can be appealed.
2. Visitation permission for any person who has a significant relationship with a child who is the subject of a permanent guardianship agreement.	The guardian of a child staying at a child care center is not allowed to see his/her child because the center feels the interaction between guardian and child is detrimental to the welfare of the child. This could be appealed to the Appeal Panel.
3. Disclosure or refusal to disclose information in the possession of the Minister that relates to the appellant, except information regarding adoptions (see Section 66).	A mother wishes to appeal a permanent guardianship order because she feels she has resolved the problems that led to the order. The Department refuses to give her background information for the period of permanent guardianship on the child. This could be appealed by the mother to the Appeal Panel.
4. The provision or refusal to provide any support services to a child 16 years of age or over by entering into a support or custody agreement.	A seventeen year old was living in a foster home under a custody agreement. The Department is not willing to renew the agreement because they feel the youth is capable of living without the support of the Department. This decision can be appealed by the youth.

5.	Refusal or failure of a director to enter into an agreement regarding a child in need of protective services, or to apply to the Court in respect of a child who in the opinion of a director, is in need of protective services.	A worker refuses to seek a temporary guardianship order for an adolescent whose behavior is out of the control of the parents. This decision could be appealed by the parents to the Appeal Panel.
6.	The refusal or failure to enter into an agreement under Section 72 in respect of a handicapped child.	A parent of a handicapped child applies to the Department for access to a Departmental program and access is denied. They may appeal under this sub-section of the Act.
7.	A person who has applied to a director to become a foster parent or to have a a child who is the subject of a permanent guardianship agreement or order placed in his home for the purposes of adopting that child and whose application is refused.	An application for foster parent status is turned down. The applicants may appeal the decision under this sub-section of the Act.
8.	Any other matter prescribed in the regulations as being subject to an appeal.	(No other matters are prescribed in the regulations at this time.) (C.W.A. Section 86 (2) & (4))

In all of the above situations the application for appeal of a decision must be submitted to a director (or his/her designate) not more than thirty days after the date on which the appellant receives notice of the decision. Decisions of the Children's Guardian or a Minister cannot be appealed to the Appeal Panel.

People Who Can Initiate an Appeal

The following people can launch an appeal:

° a guardian of the child
° a child
° a foster parent or any other person who is affected by the decision and has had continuous care of the child for six months or more.

(C.W.A. Section 81 (1))

Powers of the Appeal Panel

The Appeal Panel is not bound by Departmental policy. Its decisions do, however, have to lie within the intent of the Child Welfare Act.

The decision of the Appeal Panel can confirm, vary, or reverse the decision of a director. Decisions of the Appeal Panel are also final.

Since the Appeal Panel has been formulated through legislation, it comes under the Administrative Procedures Act. The Administrative Procedures Act outlines the conditions with which a formal appeal process must comply. These conditions include such things as the right of all parties to have legal representation, to appear in person before the panel, etc.

Administrative Reviews

In addition to the Appeal Panel, Alberta Social Services provides for an internal review of child welfare decisions through Administrative Reviews.

Administrative Reviews consist of a panel of three Departmental staff (usually a District Office Manager, Casework Supervisor not involved with the case, and a manager from another office). Administrative Reviews investigate the decision and either confirm, change or reverse an initial decision. Any decision made through an Administrative Review can be referred to the Appeal Panel.

Any person who has the right to make an appeal to the Appeal Panel can also initiate an Administrative Review. Only decisions that by legislation can be heard by an Appeal Panel, can be referred for an Administrative Review. The use of this Administrative Review mechanism is optional since the appellant may proceed directly to the Child Welfare Appeal Panel with his on her appeal.

Administrative Reviews must be heard within three working days from the date the request for review was submitted. Decisions must also be communicated within one day.

Exercise

1. Can foster parents appeal the closing of a foster home to the Appeal Panel?

2. Are Departmental workers accompanied by a lawyer when appearing before the Appeal Panel?

3. Can a foster parent appeal a decision by a worker to let a temporary guardianship order expire?

4. Are appellants first required to apply for an Administrative Review before considering an appeal to the Child Welfare Appeal Panel?

Answers

1. NO. This decision cannot be appealed; however, if the foster parent reapplies and is turned down, this decision can be appealed.

2. NOT NECESSARILY. This will depend upon the nature of the appeal and whether or not the appellant has legal representation.

3. NO. If after the order expires the foster parents have information that leads them to believe that another guardianship order is necessary, this may be appealed, once the foster parent is notified that the Department will not seek guardianship.

4. NO. The Administrative Review is an internal Departmental mechanism that is open to the appellant, but they are not required to use it prior to launching an appeal to the Child Welfare Appeal Panel.

Commonly Asked Questions

1. Can client files be reviewed by the appellant and do they have access to confidential reports?

   YES. If the decision of the worker was based on information contained in client files and confidential reports, the client would have the right to access these reports.

2. How formal is an Appeal Panel hearing?

   The process is usually less formal than a normal court hearing. The degree of formality may depend upon the nature of the appeal.

3. Can the decision of an Appeal Panel be appealed to the Court system?

   YES. If the appellant felt that any of the procedures stipulated under the Administrative Procedures Act were not followed appropriately, this could be appealed to a court of law.

References

1. Alberta Social Services
   Handbook - Child Welfare in Progress
   Tab 03 - pages 63-79
   Tab 03 pages 103-111

2. Alberta Social Services
   Program Manual - Child Welfare in Progress
   pages: PM 78-88
   PM 59

3. Alberta Social Services - Native Child Welfare Services Practice Guidelines
   Child Welfare In Progress

4. Alberta Child Welfare Act

5. American Humane Association
   "Helping in Child Protective Services: A Casework Handbook"

Volume

6

PROGRESS

Alberta
SOCIAL SERVICES

ALBERTA SOCIAL SERVICES

Information Guide To The Child Welfare Act

Unit VI

Joint Guardianship
Private Guardianship
Adoption

CHILD WELFARE IN PROGRESS
December, 1986

ACKNOWLEDGEMENTS

This manual is the result of input and written contributions from a broad range of Departmental staff. The Child Welfare Implementation Project is appreciative of the efforts of these individuals. Through their support and involvement, both the quality and relevance of this manual was greatly enhanced.

The Child Welfare Implementation Project would also like to thank the following staff of Alberta Social Services who have contributed to the writing and technical development of the Orientation Manual:

Hugh Nicholson - Project Manager, Child Welfare Implementation Project Staff Development Sub-Project.

Jim Barnet - Writer, Human Resources of Canada.

Joyce Hanley - Training Officer, Training Resources Corporate Staff Development.

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Judy Maggs - Regional Representative, Northeast Region.

Ann Moore - Regional Planner, South Region, Alberta Social Services.

Danny Roy - Regional Staff Development Coordinator, Northeast Region.

PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,

Helen Wentz

Helen Wentz
Senior Director
Family and Children's Services
Alberta Social Services

HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute videotapes that may be available to you.

The overall objective of these modules is to give you, the child welfare worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

THE INFORMATION GUIDE SERIES

UNIT I

1 BACKGROUND INFORMATION
2 PHILOSOPHICAL PRINCIPLES
3 MATTERS TO BE CONSIDERED
4 MAJOR INNOVATIONS
5 DEFINITIONS

UNIT II

1 PRELIMINARY INTERVENTIONS
2 CONFIDENTIALITY
3 AGREEMENTS

UNIT III

1 SUPERVISION ORDERS
2 APPREHENSIONS
3 SERVICE FOR COURT AND RIGHTS OF APPEARANCE

UNIT IV

1 CHILDREN'S GUARDIAN AND DIRECTORS
2 TEMPORARY GUARDIANSHIP
3 PERMANENT GUARDIANSHIP

UNIT V

1 CONFINEMENT OF AN APPREHENDED CHILD
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UNIT VI

1 JOINT GUARDIANSHIP
2 PRIVATE GUARDIANSHIP
3 ADOPTION

UNIT VII

YOUNG OFFENDERS ACT

1 DEFINITIONS AND PRINCIPLES
2 PRE-COURT PROCEEDINGS
3 ROLE OF THE COURT
4 POST-COURT PROCEEDINGS

UNIT V

SECTION 1

Joint Guardianship

This section covers the definition tion of joint guardianship, the conditions that must be met in order for joint guardianship to be granted, and why it is important.

SECTION 2

Private Guardianship

This section covers the definition of private guardianship, the conditions that must be met in order for private guardianship to be granted, and why it is important.

SECTION 3

Adoption

This section covers the definition of adoption, its meaning, and the process and conditions through which a child can be adopted.

SECTION I: JOINT GUARDIANSHIP

The joint guardianship section of the legislation is the vehicle through which former care givers can continue their relationship with children.

Joint guardianship is a shared responsibility between a private individual and the Children's Guardian, for the guardianship of a child under a permanent guardianship order or agreement.

Some children who come under permanent guardianship orders experience a number of residential placements during the period in which they are under the care of Alberta Social Services. In many of these placements children often develop a close relationship with the care giver (i.e. foster parents, group home staff, etc.). Unless there is a mechanism through which these relationships can be maintained, they will often break down once children leave the home.

Understandably, it is usually in the best interest of the children to maintain some level of involvement from the people who have had a significant impact on their lives.

The provisions in the Child Welfare Act for joint guardianships have the flexibility to allow people who wish to assume guardianship responsibility to determine with the Children's Guardian the guardianship role that they wish to assume.

The following is a brief outline of this legislation:

> Any adult may make an application in the prescribed form to be appointed as a guardian of the child jointly with the Children's Guardian.
>
> The applicant shall serve notice of the time and place at which the application is to be heard on the Children's Guardian not less than 30 days before the date of the hearing.
>
> (C.W.A. Section 34 (1) & (2))

The Court may make an order appointing a person as a guardian of a child jointly with the Children's Guardian if it is satisified that the:

a. person is capable of assuming and willing to assume the responsibility of joint guardianship of the child,
b. person has had a significant and continuing relationship with the child,
c. child has consented, if the child is twelve years of age or over,
d. Children's Guardian is of the opinion that it cannot reasonably be anticipated that the child will be adopted within a reasonable time, and
e. appointment of that person as a joint guardian will be beneficial to the child.

(C.W.A. Section 34 (3))

If the Court makes an order the Children's Guardian:

a. may exercise all of the authority of a guardian of the child to the exclusion of the other guardian, and
b. has sole authority to consent to the adoption of the child.

(C.W.A. Section 34 (4))

If the Court makes an order appointing a joint guardian and if the Children's Guardian and the joint guardian have been unable to negotiate differences in that agreement and have not complied with the terms of the agreement then the Court may make an order prescribing:

a. the access that will be provided between the joint guardian and the child, and
b. the conditions under which the Children's Guardian shall consult with the joint guardian on matters affecting the child.

(C.W.A. Section 34 (5))

The role of the Child Welfare Worker in a joint guardianship application may be to make recommendations to the Children's Guardian as a concerned and interested professional or provide information to both the Court and Children's Guardian and/or make presentations to the Court as a representative of the department.

The Child Welfare Worker receives notification that an application has been made for joint guardianship and would be required to submit information regarding the appropriateness to the Regional Children's Guardian.

They may also be required to appear in Court to present evidence.

The Children's Guardian would negotiate the guardianship role to be provided by the private party.

Example

A thirteen year old boy, John, has been in a foster home for the past two years. He is under a permanent guardianship order and has formed a close relationship with his foster father. Although John knows that the foster parents are not his natural parents he constantly refers to them as his parents. Lately, John has become involved in a number of thefts and may be sent to an institution under the Young Offenders Act.

The foster parents wish to keep in contact with John and hope that he will be able to return to their home upon his release. John also wants the foster parents to be involved in decisions affecting him in the future, because he feels they are the people who best understand him.

The foster parents believe that joint guardianship would help maintain their involvement, and also increase the likelihood of John's return to their home. Adoption was discussed with the foster parents; however, at this point they were hesitant because of John's recent delinquencies.

Review Of Joint Guardianship

If the Court makes an order appointing a joint guardian, any party - the Children's Guardian, the joint guardian, or the child, if over 12 years of age - may apply to the Court in the prescribed form at any time for a review of the order.

The applicant shall serve notice of the date and place at which the application for a review is to be heard on the Children's Guardian, the joint guardian and the child (if the child is 12 years of age or over) not less than five days before the date of the hearing.

The Court may on hearing the application and in accordance with the Act (Section 34) continue, vary or terminate any order previously made.

(C.W.A. Section 35)

In joint guardianship the child welfare worker may play various roles, depending upon the situation:

- explaining the joint guardianship to potential applicants and helping them prepare for the court process,
- exploring joint guardianship with the child and representing the child's interests in court,
- assessing an application for joint guardianship and making representation to the Children's Guardian, and
- notifying the Regional Children's Guardian of a joint guardianship application.

Questions:

1. Does the Children's Guardian have "veto" power in a joint guardianship order?

2. Can a Child have more than one joint guardian?

3. If there is a conflict between the joint guardian and the department, who has the final authority on the decision?

4. Can a care giver apply for a joint guardianship order without involving the Child Welfare worker?

Answers:

1. No. The Children's Guardian does not have the power of "veto" per se. However, the court is required to consult the Children's Guardian in order to see if he/she feels such an order would be in the best interests of the child.

2. Yes. There is no legal limit to the number of joint guardians. Indian bands may also apply for joint guardianship.

3. The Children's Guardian has the authority to make the decision; however, every attempt should be made to resolve the matter first with the joint guardian(s).

4. Yes. However, the Children's Guardian must be notified.

References

1. Alberta Social Services
Handbook Child Welfare In Progress
Tab 03 - pages 50-60

2. Alberta Social Services
Native Child Welfare Services Practice Guidelines
Child Welfare In Progress

SECTION II: PRIVATE GUARDIANSHIP

A private guardianship order is an application by a private person(s) to become the guardian(s) of a child. This guardianship can be shared with any other guardian the child may have, or the Court may terminate the guardianship of any other individuals at the time of granting a private guardianship order (Section 54(2) C.W.A.). Usually other guardianship orders are terminated, including guardianship under the Children's Guardian.

This order provides an opportunity for any adult who has had continuous care of a child for more than six months (and if the child or the applicant resides in Alberta) to assume the primary guardian role for the child.*

Private Guardianship orders provide a legal mechanism for:

- Native persons in recognizing custom adoptions,
- foster parents who have had long term care of foster children and where adoption is inappropriate, and
- step-parents or blood relatives where it may not be in the best interests of the child to sever all ties with the biological parent.

---

* If the Court is satisfied that it is in the best interests of the child, it may waive both of the above requirements.

The following is the legislation related to private guardianship:

Applications cannot be made if the child is the subject of a temporary guardianship order.

Applications cannot be made if the child is the subject of a permanent guardianship order unless the appeal period for the order has expired.

Applications can be made where the child is in permanent care of the Department.

(C.W.A. Section 49)

Applicants must serve notice of the hearing not less than thirty (30) days before the date of the hearing:

1. on the guardian of the child
2. on the child (if the child is 12 years of age or over)
3. on a director if the child is not in care of the department
4. on the Children's Guardian, or his/her delegate if the child is under the guardianship of the Children's Guardian.

The Court may choose to amend or alter these requirements.

(C.W.A. Section 51)

The Court, on hearing an application may require the applicant to provide the Court with a report in the prescribed form and prepared by a qualified person.

1. If the Child is a subject of a permanent guardianship agreement or order, the report will be completed by a child welfare worker.
2. In all other cases the report must be prepared by:
   a. a registered social worker
   b. a registered psychologist
   c. a person who holds at least a Bachelor's degree in social work from an accredited university or school
   d. a person who is qualified by virtue of academic qualifications or experience or a combination of both.

(C.W.A. Section 51(1)(2) & (3))

If the child is not the subject of a permanent guardianship agreement or order, the applicant shall serve a copy of the report on a director not less than 2 days before the report is provided to the Court.

Upon being served with such a notice a director may conduct an investigation with respect to the proposed guardianship and may make representations to the Court at the time the application is heard.

The content of the report will contain indications of:

1. Applicant's suitability as a guardian
2. Applicant's willingness and ability to assume responsibility as a guardian
3. Whether or not the appointment is in the best interests of the child.

(C.W.A. Section 51)

Once the private guardian is appointed, guardianship cannot be revoked except through the normal court appeal process or through proceedings under child protection legislation (i.e., application for permanent guardianship order due to neglect or abuse).

Example

Maria is a seven year old who has been living with her grandmother since her birth. Maria's mother was very young when she had Maria, and since then, she has been unable and unwilling to care for Maria. Maria sees her mother occasionally, and has now learned that her mother is living with a man who has physically abused Maria.

Maria's grandmother wants to protect Maria from this man, and is worried that her daughter will now want to take her back. Because of this she has contacted Alberta Social Services. The child welfare worker advised that in order to be in a better legal position to protect Maria, her grandmother should apply for private guardianship under either the Child Welfare Act or the Domestic Relations Act. The child welfare worker suggested that consideration be given to the Domestic Relations Act (rather than the Child Welfare Act) because the order would come from a higher court.

PRIVATE GUARDIANSHIP

Questions:

1. Must a child be under permanent guardianship for a private guardianship order to be issued?

2. Can a private guardianship order be cancelled by the department if they find the private guardian(s) unsuitable after the order has been issued?

Answers:

1. No. Private Guardianship can be given without the child first being under a permanent guardianship order. This would be consistent with the principle of least intrusiveness.

2. No. The order can be terminated only by obtaining a permanent guardianship order. This order would need to come through the same process as any other child protection case.

References

1. Alberta Social Services
Handbook - Child Welfare In Progress
Tab 03 - pages 79-82

2. Alberta Social Services
Native Child Welfare Services Practice Guidelines
Child Welfare In Progress
pages 13-14

SECTION III: ADOPTION

In this section we will discuss adoption, its meaning, and the process and conditions through which a child can be adopted.

By definition, adoption, ie: "to take into one's own family by legal process and treat as one's own child", is a permanent move on the part of the adopting parent and on the part of the person(s) or agencies giving the child up for adoption, and needs to be given full thought and consideration.

This has implications for child welfare workers in that investigations and discussions need to be thorough and candid.

All adoption orders are issued though a petition made by a director to the Court of Queen's Bench. In this part of the manual both ward and private adoption petitions will be examined. In addition a number of issues related to adoption orders will also be described. They include:

- the Adoption Registry
- disclosure of information
- publication of adoption
- financial assistance.

Adoption Petition Process

All adoptions are granted through a petition submitted to a director. Once a director receives the petition he is required to complete an investigation, and submit both the report of the investigation and the adoption petition to the Court of Queen's Bench within six (6) months. The adoption petition must also be accompanied by affidavits disclosing:

a. the name, date of birth, sex, and parentage of the child to be adopted, so far as is known;
b. the age, address, marital status and occupation of each petitioner;
c. the relationship, if any, of the petitioners to the child; and
d. the fitness of each petitioner to adopt the child.

(C.W.A. Section 56.1 & 56.2)

When the child is the subject of a permanent guardianship order or agreement the adoption cannot be granted unless a director submits in writing a statement indicating that, in the opinion of the director, the petitioner is fit to have the care and custody of the child.

In addition to the above, the consent of the guardian and the child (if 12 years of age or over) is required in order for the adoption order to be granted.

(C.W.A. Section 56.3 & 60 (1))

Once the adoption order is granted the child will be legally considered a full member of the adoptive family.

Adoption of Children Under Permanent Guardianship

Each year the department receives a large number of applications from Albertans to adopt children under permanent guardianship orders. Usually the number of applications is far in excess of the new born babies available for adoption. Understandably the waiting list also varies in length from one year to the next.

Applicants are often eager to know how long they will need to wait in order to receive a child. Through having this information, they feel that they can better plan for the care of the child. Also, because the adoption process is new to them, it is easy to become frustrated with both the procedures and any delays beyond the time period suggested by the social worker. Because the waiting periods vary a great deal and because a commitment to a specific waiting period may increase the frustration of potential adoptive parents, workers are requested to focus more on the factors affecting the waiting period rather than offering a specific time span.

Due to the long waiting period, the department is finding that normally hard-to-place children (e.g. older children, handicapped children, etc.) are more frequently adopted by people on the wait lists and standby lists. Therefore, it is important to discuss with the applicants the possibility of adopting one of the harder-to-place children.

Private Adoptions

If a guardian of a child wishes to surrender his/her child to a private individual, rather than Alberta Social Services, the person(s) who receive the child is required to notify a director within thirty (30) days of receipt of the child. Also, if under Section 64(3) of the legislation, a person adopts the child of their spouse, the spouse continues to be a guardian of the child and the child is still, by law, considered to the a child of the spouse.

(C.W.A. Section 56.4 & 64 (3))

Adoption Of Native Children

Special conditions should also apply when placing Native children for adoption. These should include:

- In some cases, consideration of a private guardianship, in place of an adoption order. This may more appropriately reflect the Native adoption customs.
- When adoption is considered as part of the case plan, communication of this to a chief, council or designate.
- Placement in accordance with the priority placement guidelines.
- Adoption does not affect the child's Indian status. Adoptive parents should be made aware of this by the adoptions worker and encouraged to exercise these rights.
- When completing home studies for Native children, comments should be made regarding the applicant's ability and willingness to ensure the child maintains his cultural heritage.

A more detailed outline of the issues involving the adoption of Native children is included in the departmental manual "Native Child Welfare Services: Practice Guidelines."

Adoptions Registry

Applications can be made for the disclosure of the identity of the adopted person, his biological mother, his biological father or his siblings to the Minister by:

a. the adopted person if he has reached the age of 18 years,
b. the biological mother of the adopted person,
c. the biological father of the adopted person,
d. an adult sibling of the adopted person.

(C.W.A. Section 65 (1))

This information is kept in a registry by the Minister. Upon receipt of an application, the Minister shall enter the name of the applicant in a record kept for this purpose, and shall examine the record to see if there is a match. The match determines:

a. if the applicant is an adopted person, whether or not their biological parents have been entered,
b. if the applicant is the biological mother or biological father of an adopted person, the name of the adopted person is entered, or
c. if the applicant is a sibling of an adopted person, if the name of the adopted person is entered.

(C.W.A. Section 65 (2))

If the applicant is an adopted person and the Minister determines that the information sought is available in the registry, the Minister shall disclose the identity of each to the other person(s) involved.

(C.W.A. Section 65 (4) (5) & (6))

If the applicant withdraws his application, the Minister shall remove the name from the registry.

(C.W.A. Section 65 (7))

If the Minister cannot locate a person whose name is entered in the record (registry), the Minister shall provide information only to the person he can locate.

On being advised by an adopting parent that an adopted child has died before attaining the age of 18 years, the Minister shall enter the name of the child in the record and the fact of his death.

(C.W.A. Section 65 (7) (8) & (9))

Advertising

With the written consent of a director the Department may, on occasion, advertise that a child or children in custody of a director is/are available for adoption. The Department may also publicize an announcement of a court order for adoption or publicize the approval of a petition for a specific petitioner.

Questions

Please indicate whether each of the following is true or false:

	True	False
1. Only adopted children eighteen (18) years of age or older can enter their name on the adoption registry.	____	____
2. If a guardian wishes to surrender his/her child to a private individual for adoption, a director must be notified thirty (30) days prior to placement.	____	____
3. A director is not required to complete an investigation on private adoption petitions.	____	____
4. Indian chiefs or council members should be notified if the case plan for a Native child in their band indicates the possibility of adoption.	____	____
5. Adoption petitions must be submitted to the court within six (6) months of the application.	____	____

Please insert the correct answer in the blanks for each of the following statements:

6. Adoption petitions are submitted to the Court of ____________________.

7. An adoption petition for a child under permanent guardianship cannot be approved unless the director submits an affidavit in writing, indicating:

____

____

____

8. If a child under guardianship is over _____ years of age, he must consent to the adoption in order for the petition to be granted.

Answers

1. True

2. False. Notice is required within thirty (30) days of the placement.

3. False. A director must complete the investigation.

4. True

5. True

6. Court of Queen's Bench

7. In the opinion of the director the petitioner is fit to have care and custody of the child.

8. 12 years of age

References

1. Alberta Social Services
Handbook - Child Welfare In Progress
Tab 03 - pages 83-93

2. Alberta Social Services
Native Child Welfare Services Practice Guidelines
Child Welfare In Progress
Pages 14-15

3. Alberta Child Welfare Act

Volume

7

PROGRESS

Alberta
SOCIAL SERVICES

ALBERTA SOCIAL SERVICES

Information Guide to The Young Offenders Act

UNIT VII

Definitions and Principles
Pre Court Proceedings
Court Proceedings
Post Court Proceedings

CHILD WELFARE IN PROGRESS
April 16, 1987

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This manual is the result of input and written contributions from a broad range of Departmental staff. Protection Services is appreciative of the efforts of these individuals. Through their support and involvement, both the quality and relevance of this manual was greatly enhanced.

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Dan Stavert	Regional Young Offender Representative, Edmonton Region, Alberta Social Services.
Rob Webb	Regional Young Offender Representative, Alberta Social Services.

PREAMBLE

While working with children under the Child Welfare Act you will also come into contact with other legislation and government departments. In order to carry out your casework duties in the most effective manner, and achieve the best possible outcome for the children under your care, you will need to have a working knowledge of the sections of the legislation that may affect your role as a child welfare worker.

One act of particular importance is the Young Offenders Act. A number of children with child welfare status also have status under the Young Offenders Act. As a child welfare worker, you will have a specific role to play with children on your caseload who have this dual status. This role will vary, dependent upon the child's particular status under the two pieces of legislation.

This guide was developed to help you understand the sections of the Young Offenders Act that relate to your role. It also attempts to clarify Departmental expectations.

This document therefore will help you to develop a cooperative and effective working relationships with other professionals and the families under your care.

Helen Wentz
Executive Director
Protection Services

HOW TO USE THIS MODULE

This module is meant to provide you with a overview of your role in relation to the Young Offenders Act.

The overall objective of the module is to give you, the Child Welfare Worker, an information guide which answers some of the questions you may have when carrying out your duties under the Child Welfare Act. This will assist you in becoming a more effective child welfare worker.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

THE INFORMATION GUIDE SERIES

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1. BACKGROUND INFORMATION
2. PHILOSOPHICAL PRINCIPLES
3. MATTERS TO BE CONSIDERED
4. MAJOR INNOVATIONS
5. DEFINITIONS

UNIT II

1. PRELIMINARY INTERVENTIONS
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UNIT III

1. SUPERVISION ORDERS
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3. SERVICE FOR COURT AND RIGHTS OF APPEARANCE

UNIT IV

1. CHILDREN'S GUARDIAN AND DIRECTORS
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3. PERMANENT GUARDIANSHIP

UNIT V

1. CONFINEMENT OF AN APPREHENDED CHILD
2. SECURE TREATMENT CERTIFICATE
3. SECURE TREATMENT ORDER
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UNIT VI

1. JOINT GUARDIANSHIP
2. PRIVATE GUARDIANSHIP
3. ADOPTION

UNIT VII

YOUNG OFFENDERS ACT

1. DEFINITIONS AND PRINCIPLES
2. PRE-COURT PROCEEDINGS
3. ROLE OF THE COURT
4. POST-COURT PROCEEDINGS

UNIT VII

THE YOUNG OFFENDERS ACT

The following four sections describe the parts of the Young Offenders Act that relate to the role of a child welfare worker.

Section 1 DEFINITIONS AND PRINCIPLES	This section describes the key definitions and principles upon which the Young Offenders Act is based.
Section 2 PRE COURT PROCEEDINGS	This section contains a description of the role of the police and the rights of "young persons"; and the options available at the point of apprehension, including detention and the Aternative Measures Program.
Section 3 COURT PROCEEDINGS	This section describes the events that can take place at the young person's first appearance in Court, the plea, release or detainment, pre-disposition report, the roles of court officials, and dispositions.
Section 4 POST COURT PROCEEDINGS	This section deals with review of sentence, appeals, probation, custody and assessment, treatment and completion of sentence.

THE YOUNG OFFENDERS ACT

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INTRODUCTION

On April 1, 1984 the Federal Solicitor General proclaimed a new piece of legislation, the Young Offenders Act, in order to deal with young persons who come in to conflict with the law.

This Act outlines how young persons will be dealt with by police and the court system, and what happens if they are found guilty of committing an offense against federal statutes. The Young Offenders Act replaces the Juvenile Delinquent Act passed in 1908.

Because the Federal Young Offenders Act only refers to offenses against federal statutes (eg. the Criminal Code), the Province of Alberta proclaimed a provincial Young Offenders Act on June 7, 1984. The provincial legislation deals with offenses against provincial statutes and municipal by-laws. This legislation defines matters such as the court in Alberta that is designated a "youth court" (this is the Provincial Court) and the penalties (usually fines) resulting from convictions against provincial statutes and municipal by-laws. Since federal legislation will have the greatest impact on the role of the child welfare worker and because the provincial legislation is bound by the parameters established through the federal act, the focus of this manual is on the federal Young Offenders Act.

As a child welfare worker you will be involved with children who, by circumstance or behavior, will come into contact with law enforcement authorities. Depending upon the status of each child under the Child Welfare Act your role and responsibilities in relation to the Young Offenders Act may vary. In instances where the Department has temporary or permanent guardianship, every reference in the Young Offenders Act which calls for parental involvement includes you as a representative of the Children's Guardian. In situations where the department has a non-guardianship service role, as is the case with support and custody agreements, your role as a concerned professional will extend to any event or circumstance where the department can act in the best interest of the child and his or her family.

To help you fully understand your role and responsibilities in relation to the Young Offenders Act, this self-study guide will help you to become familiar with key sections of the legislation and their implications for you in your position as a child welfare worker. The guide will cover four areas: definitions and principles, pre-court proceedings, court proceedings, and post court proceedings. Further information should be obtained directly from the Act or through consulting references found at the end of each section of this guide.

In order to ensure that this material covers areas that are important to you as a child welfare worker, we polled a sample of workers. We asked them what were the ten questions asked most by child welfare workers in relation to the Young Offenders' Act. The results are listed below. Read the questions and see how many you can answer.

1. Are child welfare workers required to intervene when a child is being released from secure custody and may be a danger to himself/herself, or others? Answer: Page 46

2. Which takes precedence: the Young Offenders Act or the Child Welfare Act? Answer: Page 17

3. Which Act now deals with truancy: Child Welfare, Young Offenders or the School Act? Answer: Page 17

4. Can child welfare workers allow probation officers to view particular child welfare files? Answer: Page 39

5. Can a child welfare worker release information without consent, to: i) a Youth Court Judge, ii) Crown Counsel? Answer: Page 45

6. Can a child welfare worker be appointed as a probation officer under the Young Offenders Act? Answer: Page 45

7. Can a Native counsellor be appointed as a probation officer under the Child Welfare Act? Answer: Page 45

8. Can Child Welfare provide community youth workers for young offenders who are to be discharged from a Young Offender Custody Facility? Answer: Page 60

9. Must Child Welfare intervene in cases where a child is refusing to return home after being discharged from a Young Offender Custody Facility? Answer: Page 60

10. What is Child Welfare's responsibility for a young offender who is being released from the care of the Solicitor General and whose parents resides in another province? Answer: Page 60

SECTION I - DEFINITIONS AND PRINCIPLES

Section 2 of the Young Offenders Act (Definitions) and Section 3 (Declaration of Principle) are two key sections of the legislation because they establish the parameters by which the remaining sections of the act are interpreted.

Definitions

The first definition of importance to a child welfare worker is the term "young person". By knowing the definition of a "young person" under the legislation, you will be in a position to determine whether or not the Young Offenders Act applies to a specific child.

> "Young person" means a person who is or, in absence of evidence to the contrary, appears to be:
>
> a) twelve years of age or more, but
> b) under eighteen years of age . . .
>
> and where the context requires, includes any person who is charged under this Act with having committed an offense while he was a young person or is found guilty of an offense under this Act.
>
> Quoted from Section 2 Y.O.A.

Through this definition a youth who is eighteen years of age or over, but who committed an offense before his eighteenth birthday, can still be charged under the Young Offenders Act.

> - age may be proved in a variety of means including:
> - production of a birth certificate or other documentary evidence of age
> - the testimony of a parent
> - inferences from the young person's appearance or testimony.
>
> Summarization of Section 57 Y.O.A.

Another definition of importance to a child welfare worker is the term "parent". Under the Young Offenders Act a parent is:

> Any person who is under a legal duty to provide for that other person or, any person who has, in law or in fact, the custody or control of that other person . . .
>
> Quoted from Section 2 Y.O.A.

Many of the children under the care of Alberta Social Services fall within this definition. This includes children under: custody agreements, temporary guardianship orders or permanency guardianship orders and agreements. Therefore, if a child on your caseload who is in the custody of Alberta Social Services and is considered a "young person" under the Young Offenders Act, is charged with an offense under this act, you may be required to play the role of a parent. This would include rights such as: the right to receive court notices, and to attend court hearings. In other sections of this manual additional rights and obligations will be described.

This definition does not exclude the rights of the child's biological parents unless the child is under a permanent guardianship order or agreement. With the exception of permanent guardianship, the rights and obligations of child welfare workers and the child's biological parents will depend upon the status of the child and the decision making authority included in agreements between the biological parents and the Department. Whenever possible emphasis should be placed on involving the biological parents in decisions affecting their child under the Young Offenders Act.

A third term of importance to you is that of a "Provincial Director".

> a "provincial director" means a person, a group or class of persons, or a body appointed... to perform... any of the duties or functions of a provincial director under [the Young Offenders Act]
>
> Quoted from Section 2 Y.O.A.

In Alberta the Provincial Director of the Young Offenders Program is appointed by the Alberta Solicitor General's Department. Unless otherwise specified any reference in the manual to the provincial director will refer to this position. The term provincial director is often confused with the term "a director" which refers to a director under the Child Welfare Act. A director under the Child Welfare Act has no authority under the Young Offenders Act.

Two other definitions of importance are predisposition reports and Youth Court. In Alberta the Youth Court is the Provincial Court. A predisposition report is:

> a report on the personal and family history and present environment of a young person . . .
>
> Quoted from Section 2 Y.O.A.

These reports are requested by a youth court judge and are presented after the youth's guilt has been determined but prior to sentencing.

Declaration of Principle

Section 3 of the Young Offenders Act outlines the principles upon which the legislation is based. In many instances the principles are not embodied in the act but contained in a Preamble to the legislation. When the principles are embodied in the act (as they are with both the Alberta Child Welfare Act and the Young Offenders Act) they become an integral part of the legislation and govern the interpretation of the act and practice. A Preamble on the other hand is more of a "policy" and doesn't necessarily govern an interpretation. Therefore, the "Declaration of Principle" in the Young Offenders Act must be reflected in court decisions and practice.

This declaration underlies the philosophy that society has a responsibility to take reasonable measures to prevent criminal conduct by young persons and that young persons have rights and freedoms, in their own right, including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights. Principles upon which the legislation is based are as follows:

DECLARATION OF PRINCIPLE

1. A young person who breaks the law will bear responsibility for his or her actions.

2. Young offenders will not always be held as responsible or suffer the same punishment as would adult offenders.

3. The public should be protected as needed from Criminal Acts by young people.

4. Young offenders need control and discipline, they also have special needs and require assistance.

5. Not taking a Young Offender to court but taking some other action or no action should be considered if the public will still be protected.

6. Young people have rights and freedoms which include those in the Canadian Charter of Rights & Freedoms and the right to participate and be heard when decisions are made about them.

7. Young people should have special guarantees of their rights and freedoms.

8. Young people have the right to be told about all their rights and freedoms in the criminal law system.

9. Young people have the right to the least possible interference with their freedom as long as the public is protected and the needs of young people and interests of their families are considered.

10. It is the responsibility of the parents to look after and guide their children and young people should not be taken away from parents unless absolutely necessary.

Summarized from Section 3(1) Y.O.A.

COMMONLY ASKED QUESTIONS

1. Which Act takes precedence - the Young Offenders Act or the Child Welfare Act?

Answer:

Precedence can be a very complicated issue. Generally a federal act will take precedence over provincial legislation (although there are other factors affecting this such as the intent and purpose of the two acts, the degree of specificity of the legislation, etc.).

One important area where the Young Offenders Act takes precedence over the Child Welfare Act is custody. When a young person receives a open or secure custody disposition under the Young Offenders Act this takes precedence over any custody related agreements or orders under the Child Welfare Act.

2. Which Act deals with truancy: Child Welfare, Young Offenders or the School Act?

Answer:

The School Act deals with truancy.

Exercise

The following are a few questions on the Young Offenders Act. See how well you do on them. The answers follow.

		True	False
1.	In some instances a child welfare worker may be required to testify, in youth court, as to a child's age.	____	____
2.	A child welfare worker is always considered a parent of a child under the Young Offenders Act, if the youth has child welfare status with Alberta Social Services.	____	____
3.	The age range of children who fall under the Young Offenders Act is the same as the age range in the Child Welfare Act.	____	____
4.	The "Matters to be Considered" in the Child Welfare Act serve much the same purpose as the "Declaration of Principles"	____	____
5.	A youth who is over eighteen years of age could still be charged under the Young Offenders Act, if the offense occurred before his/her eighteenth birthday.	____	____
6.	The "Matters To Be Considered" in the Child Welfare Act and the "Declaration of Principles" in the Young Offenders Act, reflect the same principles and priorities	____	____

Answers:

1. True The child welfare worker can testify as a parent if Alberta Social Services has the youth in their custody.

2. False The child welfare worker is considered a parent only if Alberta Social Services has the child in their care and custody (i.e.: if the Department is involved with the child under a support agreement or supervision order the child welfare worker would not be considered a parent, but rather a concerned professional).

3. False The age range for the Young Offenders Act is 12 to 17 years. The age range for the Child Welfare Act is 0 to 17 years.

4. True Both Section 2 of the Child Welfare Act and Section 3 of the Young Offenders Act are embodied in the act and, therefore, must be reflected in court decisions and practice.

5. True

6. False The principles contained in the Matters to be Considered are much different than those in the Young Offenders Act. The Child Welfare Act stresses principles such as:

    - integrity of the family unit
    - protection of the child
    - use of family and community resources
    - the need to respect the child's sense of time
    - the need to respect the cultural, religious, and familial heritage of the child.
    - involvement of the child and family in decision making
    - the principle of least intrusion

On the other hand the Young Offenders Act reflects principles around:

- protection of society
- accountability of the child for his/her behavior
- the need for court diversion when feasible
- least intrusion
- the legal rights of the child
- the responsibility of the parents to look after the child.

As you can see from a comparison of these principles there are some similarities (e.g.: emphasis on least intrusion and the need to respect the responsibilities of the family unit); however there are also some major differences (e.g.: the child welfare act doesn't deal with protection of society, but focuses more on protection of the child. The Young Offenders Act doesn't deal with the issue of utilizing resources in the community in which the child lives except through court diversion measures, etc).

REFERENCES

1. The Young Offenders Act. Sections 1, 2 and 3.

2. Alberta Social Services
Program Manual - Child Welfare In Progress
Chapter 12.

SECTION II - PRE COURT PROCEEDINGS

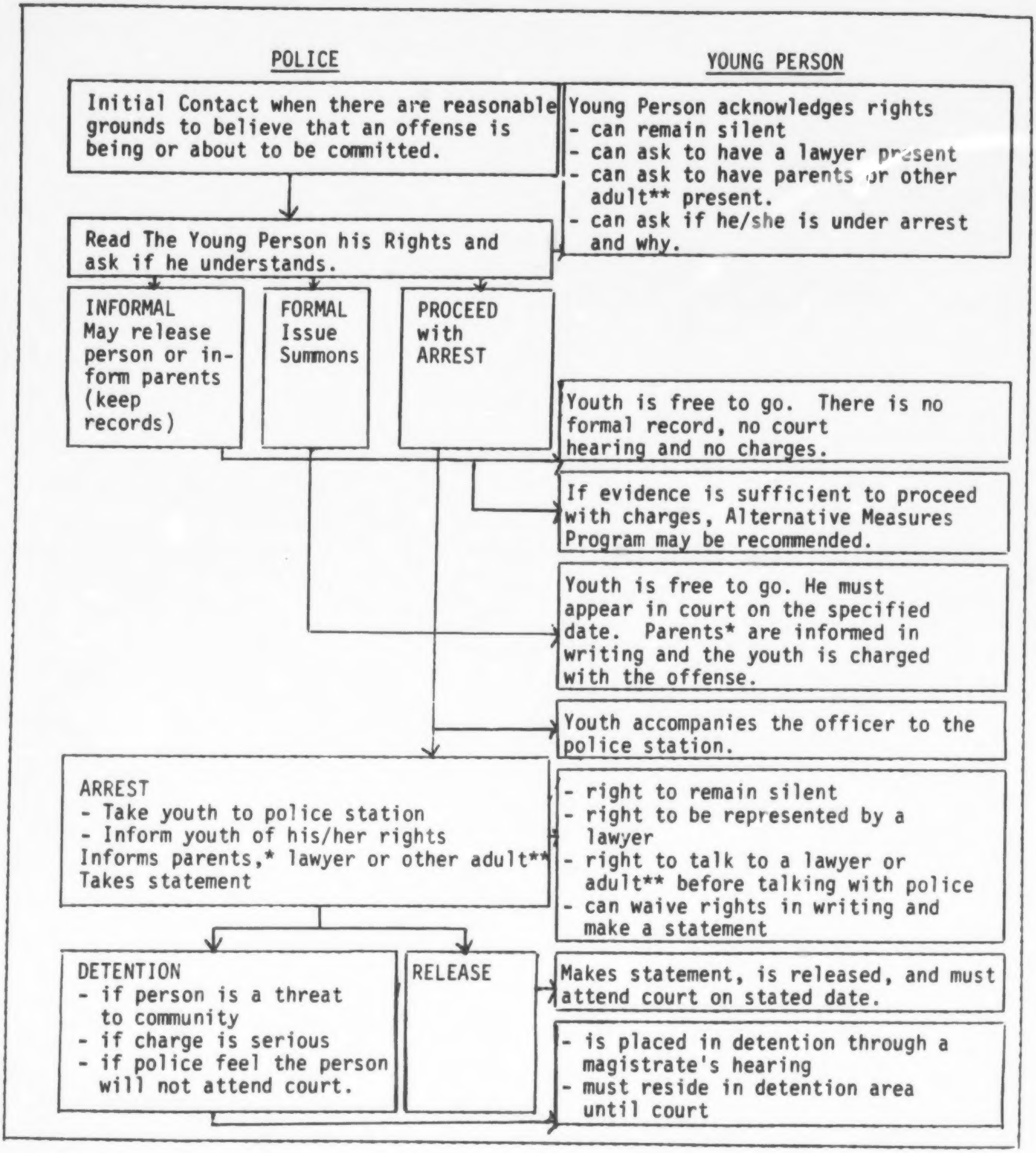
Pre-court proceedings are the activities that take place before formal charges are laid in youth court. These proceedings serve a number of purposes. First they ensure that the youth knows what his rights are and has the opportunity to exercise these rights. Secondly they provide the crown prosecutor with the opportunity to explore and implement court diversion programs which allow the enforcement personnel to hold the youth accountable for his actions while, at the same time, avoiding the need for a criminal record. Thirdly, these procedures give parents and other people responsible for the care of the youth the opportunity to become involved in the case.

In this section we will describe the key pre court proceedings that may impact upon your role as a child welfare worker. This includes:

- the role of the police
- the rights of the young person
- detention and bail hearings
- the use of Alternative Measures programs.

The Role of The Police And The Rights of The Young Person

The following diagram outlines the role of the police in response to a complaint involving a young person. It also describes the youth's rights in relation to the actions that the police may take:



POLICE

YOUNG PERSON

Initial Contact when there are reasonable grounds to believe that an offense is being or about to be committed.

Young Person acknowledges rights
- can remain silent
- can ask to have a lawyer present
- can ask to have parents or other adult** present.
- can ask if he/she is under arrest and why.

Read The Young Person his Rights and ask if he understands.

INFORMAL
May release person or inform parents (keep records)

FORMAL
Issue Summons

PROCEED with ARREST

Youth is free to go. There is no formal record, no court hearing and no charges.

If evidence is sufficient to proceed with charges, Alternative Measures Program may be recommended.

Youth is free to go. He must appear in court on the specified date. Parents* are informed in writing and the youth is charged with the offense.

Youth accompanies the officer to the police station.

ARREST
- Take youth to police station
- Inform youth of his/her rights
Informs parents,* lawyer or other adult**
Takes statement

- right to remain silent
- right to be represented by a lawyer
- right to talk to a lawyer or adult** before talking with police
- can waive rights in writing and make a statement

DETENTION
- if person is a threat to community
- if charge is serious
- if police feel the person will not attend court.

RELEASE

Makes statement, is released, and must attend court on stated date.

- is placed in detention through a magistrate's hearing
- must reside in detention area until court

---

* If the Department has custody of the child this would include the child welfare worker.

** In addition to the child welfare worker this could include care givers such as foster parents, group home supervisors, etc.

If the police feel it appropriate, a child under twelve years of age, and who is believed to have commited an offense or has been party to an offense, would be referred to child welfare authorities under Section 4 of the Child Welfare Act. Normal intake procedures would apply in these cases. The alleged offense is only one factor that you, as a child welfare worker would consider in assessing whether or not the child is in need of protection and the appropriate services.

In some cases the police, the crown prosecutor or Youth Court may wish to divert a young person from the court process after having assessed the youth as requiring protective services rather than criminal adjudication. While this is not expected to occur frequently, such referrals should be handled as you would any report of a child in need of protection.

When a youth is arrested or placed in detention the police, under Section 9(1) of the Young Offenders Act, are required to provide a parent with notice of arrest and place of detention. If the youth is in the custody of Alberta Social Services the people who have cutody of the child at the point of arrest are notified. Usually this is a foster parent or group home staff. If the police are unable to contact these people, they will try to contact another responsible adult (eg. a neighbour, crisis unit staff, etc.). Because the police often aren't aware of the youth's child welfare status at the time of arrest, the child welfare worker is not contacted. Once contacted the foster parent or group home staff should then notify the child welfare worker and forward a copy of the written court notice. It is then your responsibility, as the child welfare worker, to send the Regional Children's Guardian a copy of this notice.

Notifications of court hearings, other than the initial detention hearing, follow a slightly different process. In this instance the youth's biological parents are notified, and if the child is under a custody agreement or guardianship order or agreement, the child welfare worker is also sent a copy of the review notice.

Section In The Act	
9(2)	Police shall provide a notice of the summons, appearance notice, promise to appear or recognizance.
10(1)	A parent/guardian may be ordered by the court to attend proceedings. Failure to appear without cause is considered contempt of court and an arrest warrant may be issued.
23(3)(4)	Court will cause a copy of a probation order to be given to a parent/guardian who is in attendance or who is not in attendance if the parent is taking an active interest.
28(11) 32(5)	Parent/guardian shall receive notice of a court review of disposition.
29(1) or 28(3)	Parent/guardian shall receive notice of the Provincial Director's recommendation that a young person being held in continuous custody be released and placed on probation, giving reasons and recommended conditions of probation.
28(11)	Parent/guardian shall receive notice of the Provincial Director's application for court review of a continuous custody disposition based on his recommendation for release to probation.

Detention Hearing

If the police believe that the youth is a threat to the community, or that the child may not attend court if released on his own recognizance, or that the seriousness of the charge warrants, they may require the youth to attend a hearing before a youth court judge or other justice. This hearing would determine whether or not the young person should be held in detention prior to disposition. Under sections seven and eight of the Young Offenders Act the judge has the following options:

- place the youth in detention
- release the youth on [illegible] own recognizance
- place the youth in the care of a responsible person
- release the young person on bail

The final two options are particularly relevant to child welfare workers. For example, a youth could be released to your care or the care of a caregiver such as a foster parent or group home supervisor. The release would involve a written undertaking (form A.G. 3161) indicating a willingness to care for the youth, and to be responsible for the young person's attendance at the first court hearing. In such instances, you should be prepared to advise the judge of any circumstances affecting the probability of the youth's appearance at the court hearing. You should also amend clause number 2 of the form to read that you will make "reasonable efforts to ensure the attendance" of the youth, rather than agree to the present wording of "shall be responsible for the attendance" of the youth. This amendment has been agreed upon by the Alberta Attorney General's Department and Alberta Social Services. Under no circumstances should you assure the court verbally or in writing that the youth will be present at the hearing.

With respect to the last option, an interim release on bail, no departmental funds have been allocated to provide bail for children under care. If however you feel that, due to exceptional circumstances, the Department should consider providing bail, consult with your district office manager.

Alternative Measures

The Alternative Measures Program is a pre-charge, pre-court program in which the Crown Counsel is the gatekeeper. The program is not a substitute for the traditional exercise of police discretion. The police will make the initial recommendation to the Crown as to whether or not a young person should be admitted into the program. The police must supply the Crown Counsel with sufficient particulars of the offense to enable them to make an informed decision. The police must comply with the Young Offenders Act procedures, with respect to informing young persons of their rights to counsel, and must comply with the section dealing with procedures in taking statements. The Solicitor General administers the Alternative Measures Program.

Eligibility

Candidates for the program must be 12 to 17 years of age. They must not have any previous convictions under the Criminal Code of Canada and they must accept responsibility for their actions. Appropriate candidates should demonstrate sincere remorse. In all cases, the value of property or damage in the alleged offence may not exceed $1,000. Seven criminal offenses are approved for the program:

Type of Offense Considered in Determining Eligibility

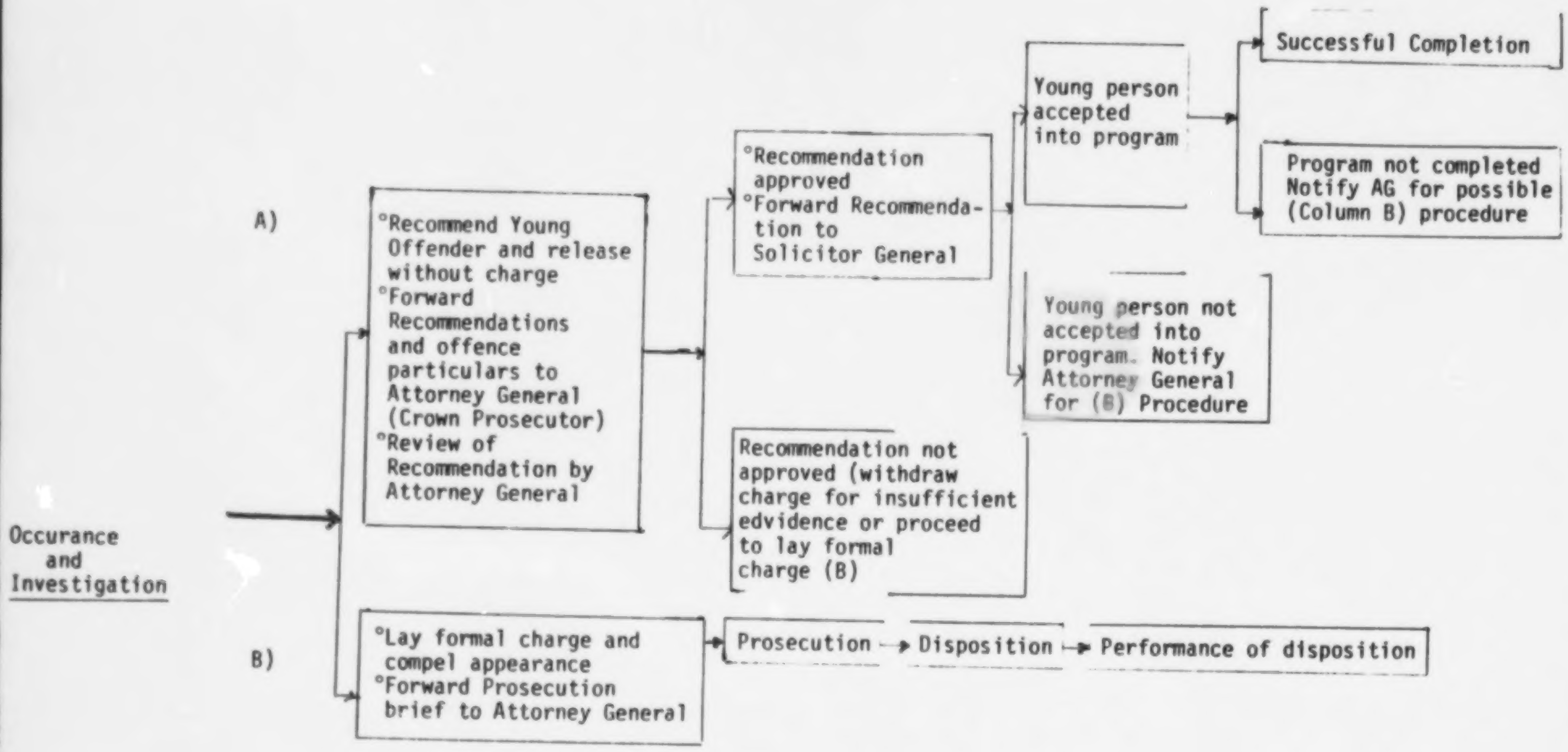
1. Break/enter into non-residential premises with intent to commit an indictable offense (should not involve violence and occurs only when goods taken do not exceed $1000.00).
2. Simple possession of cannabis or its products.
3. Theft under $1000.00.
4. Possession of stolen property.
5. Mischief and vandalism.
6. Causing a disturbance.
7. Joyriding.
8. Common Assault.
9. Fraud (by false pretenses) and fraudulently obtaining food and clothing.

10. Violation under the Liquor Control Act.
11. Violations against Section 78 of the Public Health Act.
12. Trespassing (Section 2 of the Petty Trespass Act and Section 17 of the Criminal Code).
13. Littering.

The attitude of the young offender is an important factor to be considered. Alternatives measures may involve an apology, community service, counselling, compensation or restitution agreements, other appropriate actions, or any combination. Community agencies can play an important role in administering the Alternative Measures Program.

It is not intended that the consequences under the alternate measures be more onerous than if young person went to court. Provincial policy stipulates a maximum of 30 hours of community service and a maximum fine of $200 compensation. No action under the Alternative Measures Program may last more than 3 months. All records of alternative measures will be destroyed or regarded as destroyed if there have been no further allegations or convictions two years from the date of the decision.

ALTERNATIVE MEASURES FLOWCHART


Occurance
and
Investigation
A)
°Recommend Young Offender and release without charge
°Forward Recommendations and offence particulars to Attorney General (Crown Prosecutor)
°Review of Recommendation by Attorney General
°Recommendation approved
°Forward Recommendation to Solicitor General
Recommendation not approved (withdraw charge for insufficient edvidence or proceed to lay formal charge (B)
Young person accepted into program
Young person not accepted into program. Notify Attorney General for (B) Procedure
Successful Completion
Program not completed Notify AG for possible (Column B) procedure
B)
°Lay formal charge and compel appearance
°Forward Prosecution brief to Attorney General
Prosecution
Disposition
Performance of disposition

Exercise

The following are a few questions you can answer to test your knowledge on this section of the manual. Try answering these questions and check your answers with those provided on the next page.

		True	False
1.	The police must ensure that a young person understands his rights prior to taking a statement or making an arrest.	____	____
2.	Prior to making a statement a young person has the right to contact a lawyer or talk to his parents.	____	____
3.	Both a director and the Children's Guardian under the Child Welfare Act, must receive notice for a young person under Temporary or Permanent Guardianship who is charged with a criminal offense.	____	____
4.	A predisposition detention hearing must be held by the senior police officer, prior to detaining the young person.	____	____
5.	Under Section 10 of the Young Offenders Act the Children's Guardian could be ordered to attend a court hearing if the youth was subject to permanent guardianship.	____	____
6.	If a young person fails to complete an Alternative Measures program, charges can be laid against the youth in court.	____	____

Answer Sheet

1. True They not only have to read the young person his rights, they must also take reasonable measures to ensure the young person understands his rights.

2. True The young person also has the right to make a statement without consulting with a lawyer and/or his parents.

3. True They are considered "parents" of the child for the purpose of the Young Offenders Act.

4. False The predisposition hearing is convened by a Youth Court judge or another justice.

5. True As the guardian of the child the Children's Guardian would be included by this section, however the child welfare worker would represent him in almost all occasions.

6. True If a reasonable effort have been made by the youth, however, the crown can also terminate the alternative measures program without proceeding with charges.

REFERENCES

1. The Young Offenders Act. Sections 4 - 12.

2. Alberta Social Services
   Program Manual - Child Welfare In Progress
   Chapter 12.

SECTION III - COURT PROCEEDINGS

In this section we will describe the roles of the various professionals who may be involved in a youth court hearing, some issues and events that may arise during the hearing, and the various dispositions possible under the Young Offenders Act.

Legal Representation

A young person has the right to retain and instruct a lawyer without delay, at any stage of proceedings against him. As was mentioned earlier, the young person is advised of this right: on arrest, at a judicial interim release hearing (need for detention), upon application of a transfer to Adult Court, at his trial, or at a review of disposition hearing. The following is a brief description of the ways in which a lawyer for the young person is appointed:

1. Hire His Own Lawyer	This can be done through commercial means, friends and or relatives, when the person can afford it (Alberta Social Services will not cover the costs of a privately appointed lawyer).
2. Legal Aid	The young person must apply to legal aid for assistance. Eligibility is based on income, expenses and seriousness of offense. (Alberta Social Services wards are automatically covered by legal aid when they request it).
3. Duty Counsel	For a first appearance, some courts have duty counsel to advise the young person of the nature of the offense and what plea to enter, and to ask for an adjournment so the young person can get his/her own lawyer. He also speaks for the young person on simple matters. Some rural courts do not have duty council

	present. This must be arranged in advance, usually through Legal Aid.
4. Court-Ordered Lawyers	If turned down by legal aid, the court will appoint a lawyer. The cost is assumed by Attorney General's Department.

Crown Counsel

Under the Young Offenders Act the Crown Council plays the following role:

The Crown Counsel reads the police report and determines if there is a valid and prosecutable case against the young person. The Crown Counsel is the person who will introduce evidence against the young person in court and tries to prove his guilt. At the end of the trial, if the young person is found guilty, the Crown Counsel will also recommend what the sentence should be.

If it is the young person's first appearance in court, and if a guilty plea is entered, the prosecutor might be a senior police officer. If it is a trial, the Crown Counsel will be the lawyer whose job is to present evidence against the accused person.

If, upon reading the police report, the Crown Counsel feels there is a valid case, then:

	Crown Counsel	Circumstances
1.	May decide no further action need be taken, even if there is sufficient evidence to proceed.	This is done only under very special circumstances.
2.	May send a letter of warning to the young person and his/her parents and take no further action.	This is done in the case of very minor crimes, or if it is the first offense and there are extenuating circumstances.
3.	May ask the probation officer to prepare a pre-court enquiry. This report is based on an interview with the young person and his or her parents. The report includes facts and circumstances of the alleged crime, the young person's special situation and attitude. It recommends whether the case should proceed to court or be dealt with by alternative measures. If alternative measures are recommended, a specific program is outlined in the report.	No information in this report can be used against the accused at a later time. The Young Offenders Act adds safeguards for the young person by specifying the circumstances under which alternative measures can be used.

In reference to Alternative Measures Programs, the young person must consent, and admit and he has a right to legal counsel. Parents' consent is not required.

The Judge

The judge is the person who directs the proceedings in the court room, listens to the evidence from the crown prosecutor and the defense, and decides:

1. Whether the young person is guilty or not guilty.

2. If guilty, the judge will decide what the disposition will be. The judge is also there to make sure that the young person gets a fair trial, that the young person's point of view is presented, and that his rights are protected.

The Clerk

The clerk keeps all records and files.

Probation Officer (Solicitor General)

The probation officer is responsible for preparing reports which help the judge decide on the young person's disposition and assess any progress made. The probation officer does not represent the young person; his duty is to the court.

Child Welfare Worker (Social Services)

If the young person has been involved with Social Services, the social worker may be in court. When the judge is considering a disposition, he or she may call the child welfare worker (if the youth has dual status) to give information on matters such as the youth's age, maturity, present and post placement history, case plan, and recommendations as to whether the child could function in his current placement or would need to be placed in a Young Offenders Center. Child welfare workers must obtain the proper information release before providing this information (this will be described in more detail later). The child welfare worker may be in court to act as the legal guardian or to participate as required under the Child Welfare Act.

Others

Youth Court is open to the public. This means that anyone, including the media, is allowed to sit in court and watch the proceedings. While the name of the young person cannot be published, names of other adults can. The judge has the power to warn the press not to publish information that may be harmful to the young person and to ask anyone in the court to leave if he/she feels it may jeopardize the confidentiality of the young person (for example, a person who may go to the same school).

Issues And Events That May Take Place During The Youth Court Proceedings

- First Appearance

  At the first appearance in Youth Court, the young person is asked to enter a plea of "guilty" or "not guilty." Before accepting a plea, the judge must be sure that the young person understands the charge, and must explain to the young person that he or she may plead "guilty" or "not guilty" to the charge. If the court is not satisfied that the young person understands the charge, the court will direct that a "not guilty" plea be entered. If a "guilty" plea is entered and the Youth Court judge is satisfied that the facts support a charge, a disposition or sentence may be given right away, or there may be an adjournment so that a pre-disposition report can be prepared by a probation officer. A pre-disposition report is always required before a custody disposition is given. If a "not guilty" plea is entered, there will generally be an adjournment and a date for a trial will be set.

° Transfer to Ordinary (Adult) Court

Depending on the nature and seriousness of the alleged offense, the Crown Counsel may decide to apply for a transfer to ordinary (adult) court. Transfer to adult court is only possible if the young person is 14 years of age or older. In these situations, there is a statutory requirement for a written predisposition report, and an absolute right to counsel. This option is only used where the offense is serious and in circumstances where it is felt that the transfer is in the interest of society, having regard to the needs of the young person. The young person may also apply for a transfer. Normally, transfer to adult court is infrequently used.

° Pre-Disposition Report

A pre-disposition report is an assessment of the young person's age, behavior, attitude, previous contact with the law, experience in Alternative Measures Programs, school records, and relationship with parents. A review of programs and placements in which the youth had participated prior to the offense (including any social services programs) is made available to the court as part of the pre-disposition report.

The probation officer preparing the report will interview the young person's parents or guardians and the victim (where there is an identifiable victim). Under most circumstances copies of the report must be made available to the young person, parents, child welfare workers (if the youth is under the custody of Alberta Social Services) or legal counsel. This report isn't automatically forwarded to you but instead is available upon request to the probation officer.

If the judge considers the young person to be suffering from physical or mental illness, the judge can ask for a medical, psychological or psychiatric assessment with the young person and prosecutor's consent. This is not part of the pre-disposition report and is reported separately.

Disclosure of Information By the Child Welfare Worker

When you are approached by a probation officer for information on a child who has guardianship status or has had child welfare status, in order to prepare a pre-disposition report, you should make every effort to share information in a cooperative manner consistent with the best interest of the child. However, prior to providing any information, you must request a consent of the Minister or his/her designate (the Minister has delegated this authority to the Regional Directors and, some regional administrators responsible for the delivery of child welfare services). Upon approval, you may provide information regarding:

1. age;
2. maturity;
3. character;
4. behavior and attitude;
5. willingness to make amends;
6. history of services provided by a director under the Child Welfare Act;
7. response of the young person to previous sentences and dispositions, if applicable and to services rendered to him/her; and
8. such additional information as might assist the court in making a disposition consistent with the individual needs and best interests of the young person.

In the case of support or custody agreements, the probation officer should contact the parents of the child first. If additional information is required, you may be contacted.

You should provide information verbally or in writing, and the probation officer should not be allowed to read the file. When information is provided, you should note it on the child welfare file. Furthermore, good judgement, discretion, and relevance to the current situation should be considered when releasing information to sources outside of the department.

Since a copy of the predisposition report is given to the young person and his parent/guardian, you should be aware that the information provided will become known to both the young person and his parent(s) (Section 14(5) Y.O.A.).

When appearing at the Judicial Interim Hearing (this is the first hearing for the youth, usually a detention hearing) with a child, you may release the child's name, birth date, child welfare worker's relationship to the child, status, address, type of placement and the probability of the child attending the first court appearance, without a formal release.

You should also anticipate being served with a notice pursuant to Section 9, as a guardian and/or may anticipate making representations to the Court on behalf of the child. Under such circumstances you must get Ministerial consent. In addition, where it can reasonably be expected that a staff member of an agency providing services to the child may also be called to give information at a hearing, you should request that person's name and agency be added to the consent to give evidence at the hearing. Please check with your supervisor for a description of the approval procedure as it varies from region to region.

When working with foster parents or other care givers they should be advised to refer all requests for information from probation officers to you. You should also advise them that they can, however, provide information on the youth to police officers when they are investigating an offense that involves the youth. If the foster parent feels uncomfortable or unsure about the appropriateness of releasing certain types of information, advise them to refer the officer to you.

NOTE: In some instances, the probation officer or other delegate of the Provincial Director of Young Offender Programs may request information on a child following court disposition, for the purpose of developing a rehabilitation plan. Prior to providing any information, the child welfare worker shall request a consent of the Minister (or designate) and, upon approval, may provide such information as may be necessary in establishing a rehabilitation plan or program, consistent with the individual needs of the child and the best interests of the child and his/her family.

In requesting Ministerial consent to disclose information, the request must stipulate the person to whom the information will be given, and the purpose of the disclosure, for example:

1. to the probation officer (name), for the preparation of a predisposition report;

2. to the probation officer (name) or other person (name/title), for the development of a rehabilitation plan/program;

3. to the court, to give evidence at the hearing.

Since the court may, under specific conditions, order that a medical or psychological report be prepared for the court (Section 13(1)), and since the author of the report may be cross-examined (Section 13(5)), and since a copy of the report shall be given to the young person and his parents except under specific conditions (Section 13(4)(6)), any decision to provide such information from a child welfare file, upon request by a probation officer shall require:

1. consultation with the author, if available;
2. consent of the author, where possible; and
3. consent of the Minister (or designate).

Dispositions

When a youth court finds a young person guilty of an offense, it will consider any pre-disposition report and any other relevant information before the court, before making any one of the following dispositions:

DISPOSITION	OUTCOME
1. Absolute discharge.	Free to go (and the youth has no record).
2. Fine of not more than $1,000.	Time and terms to be fixed by court.
3. Order to pay for specific damages of damaged property, or goods or injury to another person or person's property.	Time and terms to be fixed by court for specific repair and restitution. Not general damages.
4. Order to make restitution to any person of property obtained by the young person as a result of the offense.	Time and terms to be fixed by court.
5. If any property obtained as a result of the offense was sold to an innocent purchaser and then returned to the original owner by way of restitution, the court may order the young person to pay the purchaser.	Time and terms to be determined by court. The amount will not exceed the amount paid by the purchaser.
6. Community service order which would require a specified amount of work for the community. Not to exceed 100 hours for provincial offenses and	Earns credits for work performed as determined by specific program. This disposition needs the consent of the offended party.

240 hours for federal offenses, and to be completed within 12 months.	That person also has the right to make representation in court.
7. Order of prohibition, seizure or forfeiture.	Stolen property could be seized.
8. Treatment order, if a medical or psychological report recommends that a young person undergo treatment in an appropriate facility. Such orders require the consent of the youth, parents and the resource providing the treatment.	The youth is placed in a designated facility in order to receive the necessary treatment, e.g., report to Sex Offender Counselling Program.
9. Probation order for up to two years.	The youth is advised of specific conditions (eg: participation in ADAC counselling or the requirement to live at specific residence) and must report to a Probation Officer.
10. Commit the young person to custody.	The youth is placed in an Open or Secure Custody Facility for a specific period of time, for example, Edmonton Youth Development Centre or group home.

SUMMARY

COURT	YOUNG PERSON	CHILD WELFARE WORKER	FOSTER PARENTS (OR CAREGIVERS)
Crown Counsel reviews case and decides whether it goes to Court or not	° may be released under very special circumstances ° may give information for pre court inquiry ° May participate in Alternative Measures Program	° may act as a concerned professional ° may act as legal guardian	° may be contacted to provide information ° receives notice of arrest and hearings ° forewards notice to the child welfare worker
1st Appearance If guilty plea and all facts were presented, may give disposition May request transfer to adult court May request predisposition medical, psychological or psychiatric reports.	Enters plea: guilty or not guilty Could receive sentence, if plea of guilty was entered Transfer only if over 14 years and alleged offense is serious May be released or held in custody for examination. Detention cannot exceed 30 days.	° may act as a concerned professional ° may act as legal guardian May need to provide information to courts (eg. psychological assessment and file information). Consent to release information required.	° may act as a concerned professional ° receives notice of hearing and forewards to the child welfare worker
Trial prosecutor presents witnesses and evidence to prove guilt	Defense presents evidence to prove innocence	° may be called to testify	° may be called to testify
Disposition - guilty or not	° if innocent released and all records destroyed ° if guilty, sentenced	° may act as concerned professional ° may be asked to speak to sentencing	° may act as a concerned professional

COMMONLY ASKED QUESTIONS

1. Can a child welfare worker release information without consent to a Youth Court Judge or Crown Counsel?

Answer:

° Youth Court Judge

NO. Court is open and under section 91(2)(j) of the Child Welfare Act we need to have the Minister's consent to release any, except basic, information to an open court.

° Crown Counsel

YES. Section 91(2)(d) of the Child Welfare Act states that we can release information to Crown Counsel without the consent of the Minister.

2. Can a child welfare worker be appointed as a probation officer under the Young Offenders Act?

Answer:

NO. Solicitor General staff are normally assigned this responsibility. The child welfare worker acting as a concerned professional or a guardian would be placed in a conflict of interest situation by acting as a probation officer.

3. Can Native Counsellors be appointed as probation officers under the Young Offenders Act?

Answer:

YES. Probation officers can delegate authority to Native counsellors to supervise the probation orders of Native young offenders. This ensures that cultural factors will be considered within the supervision.

4. Can the Department pay the fine levied through the Young Offenders Act against a child under the care of Alberta Social Services.

Answer:

No. The youth is responsible for payment of the fine. Payment can be worked out jointly by the court, youth and social worker. This may involve giving the young person enough time to get a job to pay back the fine or through arranging for a community service option.

Exercise

To test your knowledge of this section of the self study manual please answer the following questions and then check you answers with those on the following page:

1. A lawyer can be obtained for a young person charged under the Young Offenders Act through:

    a. contacting Duty Council
    b. the Office of the Children's Guardian
    c. Legal Aid
    d. requesting the Court to appoint a lawyer
    e. requesting a Regional Director to appoint a lawyer.

2. The court __________ keeps all court records and files.

3. If the young person is __________ years of age or older counsel can apply to have the case heard in adult court.

4. When appearing at a judicial Interim Hearing with a child, a child welfare worker may release ____________________, ____________________, ____________________, ____________________, ____________________, ____________________, ____________________, without a formal Ministerial release of information.

5. When requesting a consent to disclose information the consent must stipulate the ____ and _________________________________.

6. The ____ in each region has been delegated by the Minister the authority to release child welfare information under Section 91(2)(j) of the Child Welfare Act.

Answers

1. a, c, d. (legal representation cannot be provided by Alberta Social Services because they do not have a mandate to administer the Young Offenders Act).

2. Clerk

3. 14

4. child's name, birthdate, address, child welfare status, child welfare workers relationship to the child, type of placement and the probability of the child attending the first court hearing.

5. person to whom the information will be released and the purpose of the release.

6. Regional Director (this may also be delegated by the Minister to other people in the region).

REFERENCES

1. The Young Offenders Act. Section 13 - 26.

2. Alberta Social Services
Program Manual - Child Welfare In Progress
Chapter 12.

SECTION IV - POST COURT PROCEEDINGS

This section of the self study manual addresses proceedings that come into effect once the young person's guilt has been determined and a disposition established. It addresses:

- Appeals of a court decision
- Reviews of a disposition
- Probation orders
- Destruction of young offender records

In addition this section of the manual will describe Alberta Social Service policies and expectations that may impact upon your role, if you have a young person on your caseload who is under the guardianship of Alberta Social Services and who is also under a probation or custody disposition with respect to the Young Offenders Act.

Appeals

Young persons have the legal right to appeal a youth court judge's decision to a higher court. The appeal court may alter the disposition or overturn the original decision.

In turn, the prosecutor has the right to appeal if he/she feels that the disposition or sentence is not appropriate.

Review Of Disposition

While a youth is in custody, a director, the young person, a parent, the Attorney General or his/her agent may ask for a review of a disposition.

The Court, upon being satisfied that there are grounds for review, will consider the following factors:

a. whether the young person has made sufficient progress;
b. whether circumstances that led to the committal to custody have changed;
c. any new services that are now available that were not available at the time of dispositon; or
d. any other grounds the youth court may consider appropriate.

Summarized from Section 28(4) Y.O.A.

Youth Court can modify a sentence if warranted. No review of a disposition can occur until proceedings under the appeal are completed.

Automatic and Optional Reviews for Custody Dispositions

DISPOSITION	REVIEW
When a young person has been committed tc custody exceeding one year,	review is automatic after 12 months.
When custody is 6 - 12 months,	a review of disposition can be made if Section 28(4)(a)(b)(c) and (d) applies.
When custody is 0 - 6 months,	a review application can be made, with the consent of a youth court judge.

Early Release

The Young Offenders Act provides a means for the Solicitor General Young Offender Branch to release a young person from custody and place him on probation without having a court hearing. Notice of the recommendation is filed in court or given to the young person, parents (this includes the child welfare worker for youths under T.G.O., P.G.O. or P.G.A.), or the Attorney General (or agent) and if none of the parties make application for a review of the recommendation, the judge may order the probation.

If the judge does not make the order, the Solicitor General Young Offender Branch can seek a court hearing for review.

Review of Non-Custodial Dispositions

A review of a young person's disposition may be held even if that young person is not in custody. The application can be submitted for positive or negative reasons. The application can be submitted to the Youth Court by the young person, a parent, Attorney General (or agent) or Solicitor General Young Offender Program at any time after the date of disposition. The application for review is made on the following grounds:

1. that the circumstances that led to the disposition have changed materially;
2. that the young person is unable to comply with or is having serious difficulty trying to comply with the terms of the disposition;
3. that the terms are adversely affecting the opportunities available to the young person to obtain services, education or employment;
4. on any other grounds the youth court considers appropriate.

The court may confirm, vary or terminate the disposition, or make a new disposition.

Summarized from Section 32(2) Y.O.A.

NOTE: In none of the preceding types of reviews may the youth court increase the severity of the original disposition, except with the consent of the young person, or to extend the time for completion of personal or community services where a young person needs more time to comply.

If the youth is under a temporary or permanent guardianship order or a permanent guardianship agreement, you as the representative of the Children's Guardian, have the right to request any of the preceding reviews. The request is usually made to the youth's probation officer who makes the necessary arrangements. If the youth is under a custody agreement with the department, the guardians of the youth (eg: his biological parents) are responsible for initiating a review.

PROBATION

The Young Offenders Act empowers the court to sentence a young offender to a period of probation not to exceed two years. The Probation Officer is normally an employee of a community correctional office within Alberta Solicitor General. Probation may be combined with a number of other dispositions such as community service or restitution provided the combined duration of dispositions do not exceed two years.

Three Conditions Must Appear In Any Probation Order:

- the young person bound by the probation order will keep the peace and be of good behavior;
- the young person will appear before the youth court when required by the court to do so;
- the young person will notify the community corrections office of any changes to his/her address, place of employment, training or education.

PROBATION ORDERS MAY ALSO INDICATE THAT THE YOUNG PERSON MUST:

- report to a probation officer;
- remain in a territorial jurisdiction;
- make reasonable efforts to obtain and maintain suitable employment;

- attend school or other training;
- reside with a parent or other adult the court considers appropriate;
- comply with other reasonable conditions (for example, restrictions on driving a motor vehicle, alcohol/drug use, counselling or curfew requirements).

Custody

A young person who has committed a serious offense or cannot comply with the terms of the probation may receive a custody disposition. This basically means the young person must live where they are placed by Alberta Solicitor General.

Committal To And Release From Custody

A committal to custody means that the young offender will be admitted to a designated residential facility and his access to the community may be restricted. The Court will specify that custody will be either open or secure. An open custodial facility might be a group home, young offender residential facility, detention centre, correctional institution, or wilderness camp. A secure custodial facility is a facility specified by the Lieutenant Governor in Council for the containment or restraint of young persons. Secure custody is used only if the offender is fourteen years or over (with some exceptions) and for offenses that could result in a sentence of five years or more for an adult. The difference between open and secure custody is the degree of supervision and confinement. Open custody facilities are unlocked facilities in which the youth may participate in community programs such as school, work, or recreational activities. Secure facilities have higher levels of supervision, and usually (but not always) are locked facilities. In a secure facility the youth would have very limited access to community programs.

An important principle which the Young Offenders Act embodies is that the Youth Court which issued the custody order will retain jurisdiction over the young offender until the custodial disposition (or any other disposition) is completed. However, the Young Offenders Act also recognizes that there must be some built-in flexibility to allow the Provincial Young Offender Director to plan and implement effective programs. Therefore, once the Youth Court has made a custody order specifying the level of custody, it leaves the decision regarding which facility would be most appropriate to the Provincial Young Offender Director. The Provincial Young Offender Director is able to move offenders between institutions and programs within the same level of custody, authorize transfer from open to secure custody facility for up to fifteen days, for escape or serious misconduct, and authorize temporary release to the community for a period of up to fifteen days, on his/her own initiative. In addition, the Director upon approval of the court, is able to transfer a youth to an adult correctional facility when the youth becomes eighteen years old, or release a youth from custody to probation.

The Provincial Young Offender Director may authorize two types of temporary release from custody:

- a temporary leave of absence up to a maximum of fifteen days for medical or humanitarian reasons, or to assist in the re-integration of the young offender into the community;

- a day release so the young person can attend school or training, continue employment or take part in a self-improvement program.

Access To Young Offenders Files

If you need to access information on the youth's YOA file this can be accomplished through contacting the youth's probation officer. The probation officer can release the information to you with the approval of his or her supervisor. The process usually takes only a few minutes and can be conducted over the phone. The Alberta Solicitor General's Young Offender Files will normally contain all the information that you require. If you need access to the youth's court records, and this information is not on the Alberta Solicitor General's Young Offender Files, this can be arranged through contacting the Court Administrator in writing. He or she, with the signature of a Youth Court Judge, will release this information to you. Only in very rare occasions is there a need to access court records directly through the Youth Court.

Child Welfare: Guardianship

You will remain very involved and active with a young person who has a guardianship order or agreement during his custody placement, and provide appropriate support and encouragement. The following are some guidelines:

a. The child welfare caseplan will be influenced by the disposition, the recommendation given by Youth Court and the caseplan developed by the custodial facility. As a child welfare worker you should work closely with the custodial facility, the young person and the parents in developing the new caseplan.

b. The custodial facility will consider you as an important part of the team which will work toward the goals established to facilitate the young person's rehabilitation and placement after custody.

c. Direct caregivers must be provided with as much history and background information regarding the young person and his family as is necessary to enable them to provide appropriate care. There should be an ongoing sharing of information with direct caregivers (eg: foster parents, group home staff). (Refer to Disclosure of Information, page 40 to 42).

d. Institutional Directors, group home supervisors or Home Operations are not to be delegated guardianship authority. For children who are under guardianship orders or agreements, this authority still remains with Alberta Social Services.

e. Where appropriate, you must remain in contact with the young person's parents on an ongoing basis and inform them immediately of any significant happenings, illness or injury to the young person. It is expected that the Alberta Solicitor General will contact you and not the parents to advise of significant happenings (eg: illness or injury) in cases where a guardianship order or agreement exists.

f. The number of contacts will be dictated by the circumstances of the case; however, at least one contact per month must occur and be recorded on Contact Notes (SSCH 72). You must have face-to-face contact with the young person at least once every three months.

g. A Review of Child's Progress (SSCH 72A) must be completed by you every three months.

g. In any custody placement, it is important to consider the following:

i. Clothing and Personal Belongings

- The youth should have adequate clothing upon admission; thereafter, the Alberta Solicitor General will be expected to maintain adequate clothing and order new items as required.

- If the parents wish to have clothing accompany the person or wish to arrange to purchase clothing, this should be encouraged.

ii. Medical and Immunization Records

- It is your responsibility to make appropriate arrangements to transfer the young person's medical and immunization records where necessary.

iii. Alberta Health Care Insurance

- It is your responsibility to ensure that an Alberta Health Care Card accompanies the young person, if it is available. If it is not available, the Alberta Health Care number should be made available to the caregiver.

iv. Maintenance Costs

- All maintenance costs are the responsibility of Alberta Solicitor General while a youth is in custody.

NOTE: In all cases, you must update CWIS immediately following any custody placement.

Records

All Young Offender records are destroyed when:

1. the young offender is acquitted and all proceedings in respect to an appeal have been completed or the limitation of action has expired;
2. charges are withdrawn; or
3. no action for prosecution has been taken for a period of three months.

In those cases where a young offender has been convicted, destruction of records is required when a young person has not been charged with, or found guilty of an offense as a young person or adult:

a. during the five years after all dispositions have been completed by the young person;
b. where a young person, after becoming an adult, has been granted a pardon under the Criminal Record Act.

The calculation of applicable time limits for retention of records depends upon whether further changes or proceedings have been taken under any federal statue on regulation, anywhere in Canada. If the young person has had no further contact with the law within the various time periods described, by law the records must be destroyed. On the other hand, if a young person is charged with another offense during the waiting period, his record could be used against him at a second trial.

Summarized from Section 45 Y.O.A.

COMMONLY ASKED QUESTIONS

1. Can child welfare workers provide community youth workers for young offenders who are to be discharged from a young offender setting?

Answer:

YES. Community youth workers can provide support services for released young offenders.

2. Must child welfare intervene in cases where a child is refusing to return home upon being discharged from a young offender setting?

Answer:

A child welfare worker must acknowledge and investigate the referral to determine if the parental home is appropriate, and perhaps provide support services for the released young offender.

3. What is child welfare's responsibility for a young offender who is being released from Solicitor General care and resides in another province?

Answer:

It is the Department's responsibility to assist the released individual to return to his/her home province. This service is to be coordinated through a crisis unit.

4. Are child welfare workers required to intervene when a child is being released from secure custody and may be a danger to himself/herself or others?

Answer:

In order for Alberta Social Services to pursue a secure treatment certificate, or order, an investigation must be completed, and it must determine and can be shown, that the three conditions outlined in Section 41(1) of the Child Welfare Act exist.

EXERCISE

To test your knowledge of this section please answer each of these questions and then compare your answers with those on the following page.

1. The four grounds for a review of a disposition are:

   A.____
   B.____
   C.____
   D.____

2. An automatic review of disposition must occur every ________ months.

3. An optional review of disposition can be made after ________ months of the order, providing it complies with the grounds for a review under Section 28 of the Young Offenders Act.

4. An ___________ custody facility might be a group home, youth development center or wilderness camp. A ___________ custody facility is a facility specified by the Lieutenant Governor In Council for the containment or restraint of young persons.

5. Two types of temporary release from custody are:

   A.____
   B.____

6. If you have a young person under guardianship in a Young Offender facility, what type of contact and documentation is required by Alberta Social Services?

7. If you have a child under guardianship on your caseload and he/she is in a Young Offender facility, what are the Departmental policies with respect to caseplanning?

ANSWERS

1. a) whether the young person has made sufficient progress.
   b) whether circumstances that lead to the disposition have altered.
   c) any new services that are now available that were not available at the time of the disposition.
   d) other grounds deemed appropriate by the Youth Court.

2. 12.

3. 6.

4. open, secure.

5. a) a temporary leave of up to 15 days.
   b) a day release.

6. You must contact the young person at least once a month and document this in your contact notes (SSCH 72). You must have face to face contact with the youth at least once every three months and complete a review of the child's progress (SSCH 72A).

7. ° the caseplan should reflect the disposition, the recommendations of Youth Court and the caseplan developed by the Alberta Solicitor General's Department.
   ° work closely with the custodial facility as a part of the team working towards the youth's rehabilitation and post custody placement.
   ° provide direct caregivers with the information they need regarding the youth's background and history on an ongoing basis.
   ° remain in contact with the young person's parents, where appropriate, and communicate any relevant information to them (i.e. significant happenings, illness or injuries).
   ° conduct progress reviews every three months.

REFERENCES

1. Young Offenders Act.

2. Alberta Young Offender Program (Pamphlets)
"Fine Option"
"An Overview of the Fine Option Program"
"An Overview of the Temporary Absence Program"
"An Overview of Community Programs"
"A Parent's Guide to Probation"
"Probation"
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"Temporary Release"
"Alternative Measures"
"Pre-Trial Services"
Alberta Solicitor General
Correctional Services Division
10th Floor, 10365 - 97 Street
Edmonton, Alberta T5J 3W7

3. The Young Offenders Act, 1982
Highlights
Communications Division, Programs Branch
Solicitor General Canada

4. Outline of Provisions Under The Young Offenders Act (Alberta) S.A. 1984, 4-1
Legal Resource Centre
Faculty of Extension
University of Alberta
10049 - 81 Avenue
Edmonton, Alberta T6E 1W7

5. Child Welfare Status Children Under the Young Offenders Act
"Child Welfare In Progress" (Chapter 12, Program Manual, 1985)
Alberta Social Services

6. Key Features of the Young Offenders Act from "Youth Opportunity Action" (1982)
Central Toronto Youth Services
27 Carlton
Toronto, Ontario M5B 1L2

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